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Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2014 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through March 21, 2014. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 21, 2014.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2014 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2014 supplement pamphlets and in the bound volumes of the Code.

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TITLE 12

CONSERVATION AND NATURAL RESOURCES

Chap.

CHAPTER 2

DEPARTMENT OF NATURAL RESOURCES

Article 1

General Provisions

Sec.

ARTICLE 1

GENERAL PROVISIONS

12-2-2. Environmental Protection Division; Environmental Advisory Council; duties of council and its members and director; appeal procedures generally; permit applications; inspections.

(a) There is created within the Department of Natural Resources an Environmental Protection Division.

(b)(1) The division shall have a director who shall be both appointed and removed by the Board of Natural Resources with the approval of the Governor. The director shall appoint an assistant director of the division. The director and the assistant director shall be qualified professionals, competent in the field of environmental protection. The director and the assistant director shall be in the unclassified service. In the event of a vacancy in the office of the director or in his absence or if he is disabled, the assistant director shall perform all the duties of the director. The director shall be responsible for enforcing the environmental protection laws of Georgia. The director shall hire the personnel for the division and shall supervise, direct, account for, organize, plan, and execute the functions vested in the division.

(2)(A) The Governor shall appoint an Environmental Advisory Council. The council shall consist of 15 members who shall be representative of professional and lay individuals, organizations, and governmental agencies associated or involved with environmental matters. The term of each member of the council shall be for two years, provided that of the members first appointed, seven shall be appointed for terms of one year and eight for terms of two years. Vacancies shall be filled by similar appointment for unexpired terms.

(B) The council shall advise the Governor, the board, and the director as to the efficacy of the state's environmental protection programs, the need for legislation relating to the environment, the need for expansion or reduction of specific environmental programs, and the need for specific changes in the state's environmental protection programs. The council may review and prepare written comments on proposed state plans and on standards, rules, and regulations proposed by the division. Such comments may be submitted to the director, the board, and any other individual or agency deemed appropriate.

(C) Members of the council shall serve without compensation but shall receive the same expense allowance as that received by members of the General Assembly and the same mileage allowance for the use of a personal car or a travel allowance of actual transportation cost if traveling by public carrier as that received by all other state officials and employees.

(c)(1)(A) The director shall issue all orders and shall grant, deny, revoke, or amend all permits or variances provided for in the laws to be enforced by the division. The director shall also issue any certification which is required by any law of this state or the United States to be issued by the director, the Department of Natural Resources, or the State of Georgia relating to pollution control facilities or matters. The director shall develop and implement

procedures for timely processing of applications made to the division for issuance or renewal of permits or variances, including but not limited to procedures for expedited review and granting of applications upon payment of a fee in an amount established by the director to offset the cost of expediting, all subject to compliance with requirements of law regarding such applications. Such procedures shall also provide any applicant who has applied to the division for issuance or renewal of a permit or variance with the ability to securely track the status of his or her application, with real time updates, via the division's Internet website. The director shall notify all permit or variance applicants within ten days of receipt of the application as to the completeness of the application and, if the director finds the same to be incomplete, what specific additional materials the applicant need submit to make the application complete. The director shall notify applicants within ten days of receipt of a completed application as to the name and address of the person assigned to perform the review and the date, time, and location of the application review. The director shall grant or deny any permit or variance within 90 days after receipt of all required application materials by the division, provided that the director may for any application order not more than one extension of time of not more than 60 days within which to grant or deny the permit or variance.

(B)(i) The director may identify professionals qualified to review certain permit applications in accordance with rules and regulations adopted by the board of the Department of Natural Resources.

(ii) A permit applicant may retain a qualified professional to review an application prior to submittal to the division. If the qualified professional certifies an application as complete, the division shall act expeditiously on the application.

(iii) A qualified professional certifying an application shall be independent of any professional preparing the application.

(iv) The applicant shall directly pay the fees of the qualified professional.

(v) The director may remove the qualified status of a professional if the professional provides a certification for an inaccurate application.

(2)(A) Any person who is aggrieved or adversely affected by any order or action of the director shall, upon petition to the director within 30 days after the issuance of such order or the taking of such action, have a right to a hearing before an administrative law judge of the Office of State Administrative Hearings assigned under Code

Section 50-13-40 and acting in place of the Board of Natural Resources. The hearing before the administrative law judge shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the rules and regulations adopted by the board pursuant thereto. Any administrative law judge so assigned shall fully meet and qualify as to all applicable conflict of interest requirements provided for in Section 304(h)(2)(D) of the Federal Water Pollution Control Act of 1972, as amended, and the rules, regulations, and guidelines promulgated thereunder.

(B) In any case involving the grant of a permit, permit amendment, or variance by the director, the filing of such a petition by a person to whom such order or action is not directed shall stay such order or action until such time as the hearing has been held and for ten days after the administrative law judge renders his or her decision on the matter. The petition shall be transmitted to the administrative law judge not more than seven days after the date of filing. The provisions of subsection (c) of Code Section 50-13-41 notwithstanding, the hearing shall be held and the decision of the administrative law judge shall be rendered not later than 90 days after the date of the filing of the petition by such a person unless such period is extended for a time certain by order of the administrative law judge upon consent of all parties; in addition, the administrative law judge may extend the 90 day period for good cause shown for a period not to exceed an additional 60 days.

(C) The provisions of subparagraph (B) of this paragraph notwithstanding, in any case involving the grant of a permit, permit amendment, or variance by the director regarding water withdrawal for farm uses under Code Section 12-5-31 or Code Section 12-5-105, the filing of a petition under subparagraph (A) of this paragraph by any person to whom such order or action is not directed shall not stay such order or action.

(D) The decision of the administrative law judge shall constitute the final decision of the board and any party to the hearing, including the director, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50.

(3)(A) Persons are "aggrieved or adversely affected," except as set forth in subparagraph (B) of this paragraph, where the challenged action has caused or will cause them injury in fact and where the injury is to an interest within the zone of interests to be protected or regulated by the statutes that the director is empowered to administer and enforce. In the event the director asserts in response to the petition before the administrative law judge that the petitioner is not aggrieved or adversely affected, the adminis-

trative law judge shall take evidence and hear arguments on this issue and thereafter make a ruling on this issue before continuing with the hearing. The burden of going forward with evidence on this issue shall rest with the petitioner.

(B) Persons are not aggrieved or adversely affected by the listing of property in the hazardous site inventory in accordance with Code Section 12-8-97 if such property was so listed prior to July 1, 2014, nor are persons aggrieved or adversely affected by an order of the director issued pursuant to Part 2 of Article 3 of Chapter 8 of this title, the "Georgia Hazardous Site Response Act," unless or until the director seeks to recover response costs, enforce the order, or recover a penalty for violation of such order; provided, however, that persons are aggrieved or adversely affected if the director designates property as needing corrective action pursuant to paragraph (8) of subsection (a) of Code Section 12-8-97. Any person aggrieved or adversely affected by any such listing occurring after July 1, 2014, or any such designation shall be entitled to a hearing as provided in Code Section 12-8-73.

(4) Notwithstanding any other law to the contrary, in seeking civil penalties for the violation of those laws to be enforced by the division and where the imposition of such penalties is provided for therein, the director upon written request may cause a hearing to be conducted before an administrative law judge appointed by the Board of Natural Resources for the purpose of determining whether such civil penalties should be imposed in accordance with the law there involved. The hearing before the administrative law judge shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the rules and regulations adopted by the board pursuant thereto. The decision of the administrative law judge shall constitute the final decision of the board and any party to the hearing, including the director, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50.

(5) Notwithstanding any other law to the contrary, for purposes of establishing criminal violations of the standards, rules, and regulations promulgated by the Board of Natural Resources as provided in this title, the term "standards, rules, and regulations" shall mean those standards, rules, and regulations of the Board of Natural Resources in force and effect on January 1, 2013.

(6) Notwithstanding any other law to the contrary, whenever the division determines that a violation of any provision of this title or any rule or regulation promulgated pursuant to this title relating to those laws to be enforced by the division has occurred, the division shall be required to attempt by conference, conciliation, or persuasion to convince the violator to cease such violation. If the director finds

that the public health, safety, or welfare requires emergency action and incorporates a finding to that effect in his or her order, such order may summarily provide for the immediate cessation of any activity constituting such violation. Whether negotiated or directed, such order shall specify the alleged violation and shall prescribe a reasonable time for corrective action to be accomplished. Any order issued pursuant to this subsection shall become final unless the person aggrieved requests a hearing in writing before the director not later than 30 days after such order is served.

(d) Whenever the Constitution and laws of the United States or the State of Georgia require the issuance of a warrant to make an inspection under any law administered by the director, the procedure set forth in paragraphs (1) through (7) of this subsection shall be employed.

(1) The director or any person authorized to make inspections for the division shall make application for an inspection warrant to a person who is a judicial officer within the meaning of Code Section 17-5-21.

(2) An inspection warrant shall be issued only upon cause and when supported by an affidavit particularly describing the place, dwelling, structure, premises, or vehicle to be inspected and the purpose for which the inspection is to be made. In addition, the affidavit shall contain either a statement that consent to inspect has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent. Cause shall be deemed to exist if either reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the particular place, dwelling, structure, premises, or vehicle, or there is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises, or vehicle.

(3) An inspection warrant shall be effective for the time specified therein, but not for a period of more than 14 days, unless extended or renewed by the judicial officer who signed and issued the original warrant, upon satisfying himself that such extension or renewal is in the public interest. Such inspection warrant must be executed and returned to the judicial officer by whom it was issued within the time specified in the warrant or within the extended or renewed time. After the expiration of such time, the warrant, unless executed, is void.

(4) An inspection pursuant to an inspection warrant shall be made between 8:00 A.M. and 6:00 P.M. of any day or at any time during operating or regular business hours. An inspection should not be performed in the absence of an owner or occupant of the particular

place, dwelling, structure, premises, or vehicle unless specifically authorized by the judicial officer upon a showing that such authority is reasonably necessary to effectuate the purpose of the regulation being enforced. An inspection pursuant to a warrant shall not be made by means of forcible entry, except that the judicial officer may expressly authorize a forcible entry where facts are shown which are sufficient to create a reasonable suspicion of a violation of this title, which, if such violation existed, would be an immediate threat to health or safety, or where facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful. Where prior consent has been sought and refused and a warrant has been issued, the warrant may be executed without further notice to the owner or occupant of the particular place, dwelling, structure, premises, or vehicle to be inspected.

(5) It shall be unlawful for any person to refuse to allow an inspection pursuant to an inspection warrant issued as provided in this subsection. Any person violating this paragraph shall be guilty of a misdemeanor.

(6) Under this subsection, an inspection warrant is an order, in writing, signed by a judicial officer, directed to the director or any person authorized to make inspections for the division, and commanding him or her to conduct any inspection required or authorized by this title or regulations promulgated pursuant to this title.

(7) Nothing in this subsection shall be construed to require an inspection warrant when a warrantless inspection is authorized by law or a permit issued under this title.

(e) Where this title does not otherwise specify the disposition of moneys collected by the division pursuant to an order issued by the director or the disposition of civil penalties collected by the division, such moneys and civil penalties shall be deposited in the state treasury to the credit of the general fund but shall be available for appropriation by the General Assembly to the department for inclusion in the hazardous waste trust fund continued in existence by subsection (a) of Code Section 12-8-95 in keeping with the legislative intent expressed in subsection (b) of Code Section 12-8-91. (Ga. L. 1972, p. 1015, §§ 17, 1534; Ga. L. 1972, p. 1266, § 1; Ga. L. 1973, p. 344, § 2; Ga. L. 1981, p. 838, § 1; Ga. L. 1984, p. 404, § 1; Ga. L. 1985, p. 1465, § 2; Ga. L. 1991, p. 1738, § 1; Ga. L. 1992, p. 2234, § 1; Ga. L. 1993, p. 500, § 1; Ga. L. 1994, p. 1101, § 1; Ga. L. 1996, p. 319, § 1; Ga. L. 1998, p. 253, § 1; Ga. L. 2000, p. 877, § 1; Ga. L. 2005, p. 818, § 1/SB 190; Ga. L. 2006, p. 237, § 1/SB 191; Ga. L. 2007, p. 127, § 1/HB 463; Ga. L. 2012, p. 622, § 1/SB 427; Ga. L. 2013, p. 171, § 3/HB 320; Ga. L. 2013, p. 274, § 6/HB 226; Ga. L. 2014, p. sb0333, § 1/SB 333; Ga. L. 2014, p. 819, § 1/HB 904.)

The 2013 amendments. — The first 2013 amendment, effective July 1, 2013, substituted "2013" for "1998" at the end of paragraph (c)(5). The second 2013 amendment, effective April 30, 2013, made identical changes.

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, in subparagraph (c)(3)(B), inserted "if such property was so listed prior to July 1, 2014" near the beginning of the first sentence and substituted "any such listing occurring after July 1, 2014, or any such" for "such" near the middle of the second sentence. The second 2014 amendment, effective July 1, 2014, made identical changes.

JUDICIAL DECISIONS

Organization lacked standing to appeal consent order. — Trial court erred by concluding that an organization had standing to appeal a consent order between a property owner and the Director of the Environmental Protection Division (EPD) with regard to soil erosion as it lacked standing to appeal based upon its inability to demonstrate redressability as it failed to identify a procedural requirement the EPD violated, and the consent order did not fall within the categories of orders that required provision of notice and opportunity for comment. Ctr. for a Sustainable Coast, Inc. v. Turner, 324 Ga. App. 762, 751 S.E.2d 555 (2013).

12-2-6. Authority to arrange for and accept federal aid and cooperation; volunteer services; cooperation with other government entities and civic organizations; creation of nonprofit corporation.

(a) In carrying out its objectives, the department is authorized to arrange for and accept such aid and cooperation from the several United States governmental bureaus and departments and from such other sources as may lend assistance.

(b)(1) The commissioner is authorized to accept the services of individuals without compensation as volunteers for or in aid of environmental protection, coastal resources, historic preservation, interpretive functions, hunter safety and boating safety instruction, hunter safety and boating safety programs, wildlife management, recreation, visitor services, conservation measures and development, public education on conservation, and any other activities in and related to the objectives, powers, duties, and responsibilities of the department.

(2) The commissioner is authorized to provide for reimbursement of volunteers for incidental expenses such as transportation, uniforms, lodging, and subsistence. The commissioner is also authorized to provide general liability coverage and fidelity bond coverage for such volunteers while they are rendering service to or on behalf of the department.

(3) Except as otherwise provided in this Code section, a volunteer shall not be deemed to be a state employee and shall not be subject to the provisions of law relating to state employment, including, without

limitation, those relating to hours of work, rates of compensation, leave, unemployment compensation, and state employee benefits.

(4) Volunteers performing work under the terms of this Code section may be authorized by the department to operate state owned vehicles. They may also be treated as employees of the state for the purposes of inclusion in any automobile liability insurance or self-insurance, general liability insurance or self-insurance, or fidelity bond coverage provided by the department for its employees while operating state owned vehicles.

(5) No volunteer shall be authorized or allowed to enter privately owned or operated lands, facilities, or properties without the express prior written permission of the owner or operator of such privately owned or operated lands, facilities, or properties; provided, however, that such prohibition shall not apply to lands, facilities, or properties leased to the State of Georgia.

(c) The department shall have the power and authority to create, establish, and operate a program or programs to facilitate, amplify, or supplement the objectives and functions of the department through the use of volunteer services, including, but not limited to, the recruitment, training, and use of volunteers.

(d) The department is directed to cooperate with and coordinate its work with the work of each department of the federal government dealing with the same subject matters dealt with by the Department of Natural Resources. The department is authorized to cooperate with the counties of the state in any surveys to ascertain the natural resources of the counties. The department is also authorized to cooperate with the governing bodies of municipalities and boards of trade and other local civic organizations in examining and locating water supplies and in giving advice concerning and in recommending plans for other municipal improvements and enterprises. Such cooperation is to be conducted upon such terms as the department may direct.

(e) The department shall have the authority to participate with public and private groups, organizations, and businesses in joint advertising and promotional projects that promote environmental protection, coastal resource conservation, historic preservation, interpretive functions, hunter safety and boating safety instruction and programs, outdoor recreation, wildlife management, recreation, visitor services, conservation measures and development, public education on conservation, and any other activities in and related to the objectives, powers, duties, and responsibilities of the department and that make efficient use of funds appropriated for advertising and promotions; provided, however, that nothing in this subsection shall be construed so as to authorize the department to grant any donation or gratuity.

(f)(1) The department shall have the power and authority to incorporate one nonprofit corporation that could qualify as a public foundation under Section 501(c)(3) of the Internal Revenue Code to aid the department in carrying out any of its powers and in accomplishing any of its purposes. Any nonprofit corporation created pursuant to this power shall be created pursuant to Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code," and the Secretary of State shall be authorized to accept such filing.

(2) Any nonprofit corporation created pursuant to this subsection shall be subject to the following provisions:

(A) In accordance with the Constitution of Georgia, no governmental functions or regulatory powers shall be conducted by any such nonprofit corporation;

(B) Upon dissolution of any such nonprofit corporation incorporated by the department, any assets shall revert to the department or to any successor to the department or, failing such succession, to the State of Georgia;

(C) The board of directors of any such nonprofit corporation shall always include three members of the Board of Natural Resources who shall serve as nonvoting members. Service by a member of the Board of Natural Resources as a nonvoting member of the board of directors of any such nonprofit corporation shall not constitute a conflict of interest. No member of the Board of Natural Resources shall be a voting member of the board of directors of any such nonprofit corporation;

(D) As used in this subparagraph, the term "direct employee costs" means salary, benefits, and travel expenses. To avoid the appearance of undue influence on regulatory functions by donors, no donations to any such nonprofit corporation from private sources shall be used for direct employee costs of the department;

(E) Any such nonprofit corporation shall be subject to all laws relating to open meetings and the inspection of public records;

(F) The department shall not be liable for the action or omission to act of any such nonprofit corporation;

(G) No debts, bonds, notes, or other obligations incurred by any such nonprofit corporation shall constitute an indebtedness or obligation of the State of Georgia nor shall any act of any such nonprofit corporation constitute or result in the creation of an indebtedness of the state. No holder or holders of any such bonds, notes, or other obligations shall ever have the right to compel any exercise of the taxing power of the state nor to enforce the payment thereof against the state; and

(H) Any nonprofit corporation created pursuant to this Code section shall not acquire or hold a fee simple interest in real property by any method, including but not limited to gift, purchase, condemnation, devise, court order, and exchange.

(3) Any nonprofit corporation created pursuant to this subsection shall make public and provide an annual report showing the identity of all donors and the amount each person or entity donated as well as all expenditures or other disposal of money or property donated. Such report shall be provided to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the House Committee on Natural Resources and Environment, the House Committee on Game, Fish, and Parks, and the Senate Natural Resources and the Environment Committee. Any such nonprofit corporation shall also provide such persons with a copy of all corporate filings with the federal Internal Revenue Service. (Ga. L. 1937, p. 264, § 12; Ga. L. 1992, p. 6, § 12; Ga. L. 1992, p. 2328, § 1; Ga. L. 2000, p. 1566, §§ 1, 2; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2010, p. 107, § 1/HB 1199; Ga. L. 2012, p. 446, § 2-4/HB 642; Ga. L. 2012, p. 775, § 12/HB 942; Ga. L. 2013, p. 269, § 1/HB 381.)

The 2013 amendment, effective July 1, 2013, substituted the present provisions of subparagraph (f)(2)(C) for the former provisions, which read: "No member of the Board of Natural Resources shall be an officer or director of any such nonprofit corporation;".

12-2-8. Promulgation of minimum standards and procedures for protection of natural resources, environment, and vital areas of state; stream and reservoir buffers.

(a) The local governments of the State of Georgia are of vital importance to the state and its citizens. The state has an essential public interest in promoting, developing, sustaining, and assisting local governments. The natural resources, environment, and vital areas of the state are also of vital importance to the state and its citizens. The state has an essential public interest in establishing minimum standards for land use in order to protect and preserve its natural resources, environment, and vital areas. The purpose of this Code section is to provide for the department to serve these essential public interests of the state. This Code section shall be liberally construed to achieve its purpose. This Code section is enacted pursuant to the authority granted the General Assembly in the Constitution of the State of Georgia, including, but not limited to, the authority provided in Article III, Section VI, Paragraphs I and II(a)(1) and Article IX, Section II, Paragraphs III and IV.

(b) The department is therefore authorized to develop minimum standards and procedures, in accordance with paragraph (2) of subsec-

tion (b) of Code Section 50-8-7.1 and in accordance with the procedures provided in Code Section 50-8-7.2 for the promulgation of minimum standards and procedures, for the protection of the natural resources, environment, and vital areas of the state, including, but not limited to, the protection of mountains, the protection of river corridors, the protection of watersheds of streams and reservoirs which are to be used for public water supply, for the protection of the purity of ground water, and for the protection of wetlands, which minimum standards and procedures shall be used by local governments in developing, preparing, and implementing their comprehensive plans as that term is defined in paragraph (3) of subsection (a) of Code Section 50-8-2.

(c) As used in this Code section, the term:

(1) "Land-disturbing activity" means any grading, scraping, excavating, or filling of land; clearing of vegetation; and any construction, rebuilding, or alteration of a structure. Land-disturbing activity shall not include activities such as ordinary maintenance and landscaping operations, individual home gardens, yard and grounds upkeep, repairs, additions or minor modifications to a single-family residence, and the cutting of firewood for personal use.

(2) "Mountain" or "protected mountain" means all land area 2,200 feet or more above mean sea level that has a percentage slope of 25 percent or greater for at least 500 feet horizontally and shall include the crests, summits, and ridge tops which lie at elevations higher than any such area.

(3) "River corridor" means all land not regulated under Code Sections 12-5-440 through 12-5-457, and Part 4 of Article 4 of Chapter 5 of this title, the "Coastal Marshlands Protection Act of 1970," in the areas of a perennial stream or watercourse with an average annual flow of at least 400 cubic feet per second as defined by the United States Geologic Survey and being within 100 feet on both sides of the river as measured from the river banks at mean high water.

(d) The minimum standards and procedures for watershed protection referred to in subsection (b) of this Code section shall specifically include, but shall not be limited to, buffer areas along streams and reservoirs, land development densities, and land use activities. Local governments shall submit for approval by the department a watershed protection plan which shall include watershed protection standards and procedures. The department may adopt differing minimum standards and procedures of watershed protection based on the size of the watershed, the size or flow volume of the stream or reservoir, and whether or not the actual use of the municipal water supply is existing or proposed. Standards and procedures for buffer areas along streams and reservoirs shall comply with subsection (b) of this Code section and Code Section 12-7-6.

(e) The minimum standards and procedures for protection of ground water referred to in subsection (b) of this Code section shall also specifically include, but shall not be limited to, land use activities and development densities for the protection of ground water. The department may adopt differing minimum standards and procedures for ground-water purity protection based on the relative sizes, depths, and water volumes of various aquifers and based on the relative susceptibility of ground water to contamination by various land use activities and development densities.

(f) The minimum standards and procedures for protection of wetlands referred to in subsection (b) of this Code section shall include, but shall not be limited to, land use activities, land development densities, and activities which involve alteration of wetlands. The department may adopt differing minimum standards and procedures for wetlands protection based on the size or type of wetlands, the need to protect endangered or protected species or other unusual resources, and the need for a particular land use activity which will affect a wetland.

(g) The department shall, by January 1, 1992, promulgate the minimum standards and procedures for protection of river corridors referred to in subsection (b) of this Code section including, but not limited to, regulated activities within river corridor areas. In promulgating such standards, the department may classify river corridor areas and activities by type, size, and other factors relevant to the advancement of the policies and purposes of this Code section. Such standards shall include, but are not limited to, the following:

(1) Perennial river corridors shall be protected by the following criteria:

(A) A natural vegetative buffer area shall be maintained for a distance of 100 feet on both sides of the stream as measured from the stream banks; provided, however, that nothing in such standards shall prohibit or be construed to prohibit the building of a single-family dwelling, including the usual appurtenances thereto, within said area subject to the following conditions: (i) such dwelling must be in compliance with all other local zoning regulations; (ii) a septic tank or tanks serving such dwelling may be located in said area but the drainfield for any such tank or tanks must be outside said area; and (iii) any such dwelling must be located on a tract containing at least two acres of land and there shall be only one such dwelling on each such two-acre or larger tract; and

(B) Except as expressly provided otherwise in subparagraph (A) of this paragraph, septic tanks and septic tank drainfields are prohibited within such set-back area; and

(C) Such criteria shall provide for encroachments into the buffer area as needed for the construction of public roads and public utility crossings of river corridors and must meet all applicable requirements of Chapter 7 of this title, the "Erosion and Sedimentation Act of 1975," and of any applicable local ordinances on soil erosion and sedimentation control.

(2) Local governments shall identify existing river corridors and shall adopt river corridor protection plans as part of their planning process. Local governments may exempt from the planning process:

(A) Land uses existing prior to the promulgation of a river corridor protection plan from the criteria of the river corridor protection plan;

(B) Mining activities permitted by the Department of Natural Resources pursuant to Part 3 of Article 2 of Chapter 4 of this title, the "Georgia Surface Mining Act of 1968," from the criteria of the river corridor protection plan; and

(C) Utilities from the buffer and set-back area criteria of the river corridor protection plan if such utilities cannot feasibly be located outside of such areas, provided:

(i) The utilities shall be located as far from the stream bank as reasonably possible;

(ii) The installation and maintenance of the utilities shall be such as to protect the integrity of the buffer and set-back areas as well as is reasonably possible; and

(iii) The utilities shall not impair the drinking quality of the stream water; and

(D) Specific forestry and agricultural activities from buffer and set-back criteria in accordance with the following conditions:

(i) The activity shall be consistent with the best management practices established by the State Forestry Commission or the State Soil and Water Conservation Commission; and

(ii) The activity shall not impair the drinking quality of the stream water as defined by the federal Clean Water Act of 1977 (P.L. 95-217);

(3) River corridors shall be appropriately identified and mapped in the land use plans developed by local and regional governments. Such land use plans shall address, at a minimum, the following considerations with regard to river corridors:

(A) Whether the impact the land use plan has on an area would adversely affect the public health, safety, welfare, or the property of others;

(B) Whether the area is unique or significant in the conservation and movement of flora and fauna including threatened, rare, or endangered species;

(C) Whether alteration or the effects of alteration to river corridors will adversely affect the function, including the flow or quality of water, cause erosion or shoaling, or have an adverse impact on navigation;

(D) Whether modification or the effects of modification by a project would adversely affect fishing or recreational use of river corridors;

(E) Whether an alteration or the effects of alteration would be temporary in nature;

(F) Whether the project contains significant state historical and archeological resources, defined as "Properties on or Eligible for the National Register of Historic Places"; and

(G) Whether alteration of river corridors would have a measurably adverse impact on adjacent sensitive natural areas;

(4)(A) Land use plans shall provide the following acceptable uses of river corridors without long-term impairment of functions:

(i) Timber production and harvesting;

(ii) Wildlife and fisheries management;

(iii) Waste-water treatment;

(iv) Recreation;

(v) Natural water quality treatment or purification;

(vi) Agriculture production and management; and

(vii) Other uses including those permitted by the Department of Natural Resources or under Section 404 of the Federal Water Pollution Control Act as amended by the federal Clean Water Act of 1977 (P.L. 95-217).

(B) The following uses shall not be acceptable:

(i) Receiving areas for toxic or hazardous waste or other contaminants;

(ii) Hazardous or sanitary waste landfills; and

(iii) Other uses unapproved by local governments;

(5) The provisions of this subsection shall apply to each local government which contains within its boundaries any river corridor.

(h) The department shall, by January 1, 1992, promulgate the minimum standards and procedures for protection of mountains referred to in subsection (b) of this Code section including, but not limited to, land-disturbing activities within protected mountain areas. Such standards shall include, but are not limited to:

(1) The proposed land-disturbing activity must meet all applicable requirements of Chapter 7 of this title, the "Erosion and Sedimentation Act of 1975," and of any applicable local ordinances on soil erosion and sedimentation control;

(2) Where one or more septic tanks are to be used for individual sewage disposal, the proposed land-disturbing activity must meet all applicable requirements imposed by the local governing authority;

(3) Where one or more wells are to be used for individual water supply, the proposed land-disturbing activity must meet all applicable requirements of Part 3 of Article 3 of Chapter 5 of this title, the "Water Well Standards Act of 1985," the requirements of the rules and regulations of the Department of Public Health regarding individual or nonpublic wells, and any more stringent requirements imposed by the local governing authority;

(4) If sewage treatment is to be provided by any means other than one or more individual septic tanks, the sewage treatment must meet all applicable requirements of Article 2 of Chapter 5 of this title, the "Georgia Water Quality Control Act";

(5) If a public water supply system is to be provided, the water supply system must meet all applicable requirements of Part 5 of Article 3 of Chapter 5 of this title, the "Georgia Safe Drinking Water Act of 1977";

(6) No single-family residences may be constructed at a density of more than one per acre, but no such acre shall be less than 100 feet wide at the building site, except that this density restriction shall not apply to:

(A) Any lot of less than one acre if such lot was as of July 1, 1991, owned and described as a discrete parcel of real property according to the instrument of title of the person or persons owning the lot on July 1, 1991; or such lot was as of July 1, 1991, shown as a discrete parcel of real property on a plat of survey properly recorded in the real property records of the clerk of superior court by the person or persons owning the lot on July 1, 1991; or

(B) Any land or part of any land which was contained in or subject to any master plan, planned unit development, special approved development plan, or any other development plan if such plan was filed with and approved by the local governing authority

prior to July 1, 1991, pursuant to a duly enacted planning and zoning ordinance; provided, further, that any such planning and zoning ordinance must have provided for rules and procedures and governed lot sizes, density, types of buildings, and other limitations usually associated with the implementation of local zoning ordinances;

(7) No multifamily residences may be constructed at a density of more than four dwelling units per acre, except where there is a public water supply and sewerage system available to this property then the density may be increased to no more than six dwelling units per acre, but no such acre shall be less than 100 feet wide at the building site;

(8) Any application for a building permit to construct a commercial structure shall contain a detailed landscaping plan. Such landscaping plan shall identify all trees which are to be removed that exceed eight inches in diameter as measured at a point on such tree four and one-half feet above the surface of the ground and shall contain a plan for replacement of any such trees that are removed. Such application shall also include a topographical survey of the project site and an assessment of the impact that the project will have on the environment of the protected mountain after it has been completed and is in operation. Nothing in this paragraph shall be construed to require commercial structures to comply with the density provision of paragraphs (6) and (7) of this subsection;

(9) No structure may extend more than 40 feet, as measured from the highest point at which the foundation of such structure intersects the ground, above the uppermost point of the crest, summit, or ridge top of the protected mountain on which the structure is constructed; provided, however, that this height restriction shall not apply to water, radio, or television towers or any equipment for the transmission of electricity or to minor vertical projections of a parent building, including chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires, or windmills; and

(10) No person engaging in land-disturbing activity shall remove more than 50 percent of the existing trees which exceed eight inches in diameter as measured at a point on such tree four and one-half feet above the surface of the ground unless such person has filed with the application a plan of reforestation developed by a registered forester. (Code 1981, § 12-2-8, enacted by Ga. L. 1989, p. 1317, § 5.1; Ga. L. 1991, p. 1719, § 1; Ga. L. 1992, p. 6, § 12; Ga. L. 1993, p. 91, § 12; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2011, p. 752, § 12/HB 142; Ga. L. 2014, p. 597, § 1/SB 299.)

The 2014 amendment, effective July 1, 2014, added the second and last sentences in subsection (d).

CHAPTER 3

PARKS, HISTORIC AREAS, MEMORIALS, AND RECREATION

Article 1

General Provisions

Part 1

General Provisions

Sec.

12-3-12. Notification of local governing authorities prior to certain significant changes in services at state parks, historic sites, or recreational areas.

Article 3

Historic Areas

Part 1

General Provisions

12-3-50. Powers and duties of department as to historic preservation and promotion.

Article 7

Public Authorities

Part 1

Jekyll Island—State Park Authority

12-3-231. Definitions.

Sec.

12-3-234. Accountability of authority members as trustees; maintenance of financial records and books; creation of Jekyll Island—State Park Authority Oversight Committee.

12-3-243. Subdivision, improvement, lease, or sale of island by authority — Limitations on developed area; beaches to remain free and open; protected areas; disposition of proceeds of sale; creation of reserve fund; signing conveyances.

12-3-243.1. Master plan as to Jekyll Island; maintenance; contents; adherence to plan; amendments.

Part 5

The Great Park Authority

12-3-390 through 12-3-397 [Repealed].

Part 6

Oconee River Greenway Authority

12-3-402. Creation; membership; compensation; qualifications; accountabilities; assignment.

ARTICLE 1

GENERAL PROVISIONS

Part 1

General Provisions

12-3-12. Notification of local governing authorities prior to certain significant changes in services at state parks, historic sites, or recreational areas.

(a) As used in this Code section, the term "change in services" means the:

(1) Permanent change of a primary existing operational function;

(2) Reduction by 50 percent or more of the hours of operation or services; or

(3) Closure

of any state park, historic site, or recreational area operated by or pursuant to the authority of the department.

(b) Prior to making a change in services, the department shall provide 60 days' notice to the governing authority of each municipality and county in which any part of the state park, historic site, or recreational area is located regarding the specific proposed change in services. The notice required by this Code section shall be made in writing and sent to the applicable chairperson of the county commissioners and the mayor of the municipality. (Code 1981, § 12-3-12, enacted by Ga. L. 2013, p. 647, § 1/HB 189.)

Effective date. — This Code section became effective July 1, 2013.

ARTICLE 3

HISTORIC AREAS

Part 1

General Provisions

12-3-50. Powers and duties of department as to historic preservation and promotion.

(a) The Department of Natural Resources shall have the following powers and duties:

(1) To promote and increase knowledge and understanding of the history of this state from the earliest times to the present, including the archeological, Indian, Spanish, colonial, and American eras, by adopting and executing general plans, methods, and policies for permanently preserving and marking objects, sites, areas, structures, and ruins of historic or legendary significance, such as trails, post roads, highways, or railroads; inns or taverns; rivers, inlets, millponds, bridges, plantations, harbors, or wharves; mountains, valleys, coves, swamps, forests, or everglades; churches, missions, campgrounds, and places of worship; schools, colleges, and universities; courthouses and seats of government; places of treaties, councils, assemblies, and conventions; factories, foundries, industries, mills, stores, and banks; cemeteries and burial mounds; and battlefields, fortifications, and arsenals. Such preservation and marking may include the construction of signs, pointers, markers, monuments, temples, and museums, which structures may be accompanied by tablets, inscriptions, pictures, paintings, sculptures, maps, diagrams, leaflets, and publications explaining the significance of the historic or legendary objects, sites, areas, structures, or ruins;

(2) To promote and assist in the publicizing of the historical resources of the state by preparing and furnishing the necessary historical material to agencies charged with such publicity; to promote and assist in making accessible and attractive to travelers, visitors, and tourists the historical features of the state by advising and cooperating with state, federal, and local agencies charged with the construction of roads, highways, and bridges leading to such historical points;

(3) To coordinate any of its objectives, efforts, or functions with those of any agency or agencies of the federal government, this state, other states, and local governments having duties, powers, or objectives similar or related to those of the department, and to cooperate with, counsel, and advise them;

(4) To cooperate with, counsel, and advise local societies, organizations, or groups staging celebrations, festivals, or pageants commemorating historical events;

(5) To enter into contracts with both public and private parties in connection with the exercise of the powers and duties of the department under this Code section; and

(6) To send its employees onto property, the title to which is not in the department or the State of Georgia, for the purpose of research and exploration, provided that the express written consent of the owner of such property is first obtained; provided, further, that the findings of such research and exploration shall, by prior agreement,

be available to the department in the exercise of its functions under this Code section.

(b) Nothing in this Code section shall prohibit a person from restoring and utilizing an agricultural structure, including but not limited to barns, erected prior to 1965 that previously promoted Georgia tourist destinations to the traveling public for the purpose of advertising or promoting Georgia products or tourist destinations. The department shall approve applications for such structures so long as no public funds from the State of Georgia are used in connection with such restoration or utilization. (Ga. L. 1951, p. 789, § 14; Ga. L. 1970, p. 189, § 7; Ga. L. 2013, p. 523, § 1/SB 194; Ga. L. 2014, p. 866, § 12/SB 340.)

The 2013 amendment, effective July 1, 2013, added paragraph (7).

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, designated the introductory paragraph and paragraphs (1) through (6) as subsection (a) and paragraphs (a)(1) through (a)(6), respectively, and redesignated former paragraph (7) as present subsection (b).

ARTICLE 7

PUBLIC AUTHORITIES

PART 1

JEKYLL ISLAND—STATE PARK AUTHORITY

12-3-230. Short title.

OPINIONS OF THE ATTORNEY GENERAL

Mean high tide controls. — Jekyll Island State Park Authority does not have discretion to adopt the "65/35 Task Force" Recommendation to the extent that it uses a measurement reference point other than Mean High Tide. Any proposal to modify the 1996 Master Plan so as to increase substantially the measured land area of the island be thoroughly evaluated in a public process and finally adopted only after the General Assembly has been given the opportunity to weigh in on the proposal. 2013 Op. Att'y Gen. No. 13-2.

12-3-231. Definitions.

As used in this part, the term:

(1) "Authority" means the Jekyll Island-State Park Authority created by this part.

(2) "Bonds" or "revenue bonds" means any bonds issued by the authority under this part, including refunding bonds.

(3) "Cost of the project" means the cost of construction; the cost of all lands, properties, rights, easements, and franchises acquired; the

cost of all machinery and equipment; financing charges; interest prior to and during construction and for one year after completion of construction; cost of engineering; architectural and legal expenses, cost of plans and specifications, and other expenses necessary or incident to determining the feasibility or practicability of the project; administrative expense; and such other expenses as may be necessary or incident to the financing authorized by this part, the construction of any project, the placing of the same in operation, and the condemnation of property necessary for such construction and operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds issued under this part for such project.

(4) "Developed land" means land that is built upon or paved or land that has been disturbed and no longer retains original, natural functions. Specific examples include, but are not limited to:

(A) Roads and bike paths in active use, whether by the authority or the general public;

(B) Multiuse trails and pathways, whether paved or of pervious surface material;

(C) Utility easements;

(D) Firebreaks intended to protect residential areas;

(E) Man-made ponds and borrow pits; and

(F) Golf courses.

(5) "Master plan" means that document created under the auspices of and adopted by the authority of Jekyll Island and as it may be amended from time to time pursuant to Code Section 12-3-243.1.

(6) "Park" means present and future parks, parkways, park and recreational resources and facilities of the state or any department, agency, or institution of the state, and any such facility constituting part of the State Parks System and shall specifically include Jekyll Island State Park.

(7) "Project" means any subdivision, hotel, cottage, apartment house, public building, school, utility, dock, facility, watercourse, airport, bridge, golf course, tennis court, or other resort recreational facility. This term also means one or a combination of two or more of the following: buildings and facilities, and all other structures, electric, gas, steam, water, and sewerage utilities and facilities of every kind and character deemed by the authority to be necessary or convenient for the efficient operation of any department, board, commission, authority, or agency of the State of Georgia.

(8) "Undeveloped area" means any area that remains free from the built environment. The term shall include, but not be limited to:

(A) Marsh and forest where the canopy and understory remain intact;

(B) Wooded areas that are altered only by installation of firebreaks;

(C) Dirt roads no longer in use and serving no practical function;

(D) Dirt footpaths fewer than six feet in width;

(E) Sand dunes and beach, including associated crossovers; and

(F) Fresh water wetlands. (Ga. L. 1950, p. 152, § 5; Ga. L. 1960, p. 89, § 3; Ga. L. 1963, p. 391, §§ 3, 4; Ga. L. 1964, p. 100, § 1; Ga. L. 1995, p. 105, § 7; Ga. L. 2014, p. hb0715, § 1/HB 715; Ga. L. 2014, p. 69, § 1/SB 296.)

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, added paragraph (4); redesignated former paragraphs (4) through (6) as present paragraphs (5) through (7), respectively; deleted "to be" following "document" in paragraph (5); and added paragraph (8). The second 2014 amendment, effective July 1, 2014, made identical changes.

12-3-234. Accountability of authority members as trustees; maintenance of financial records and books; creation of Jekyll Island—State Park Authority Oversight Committee.

(a) The members of the authority shall be accountable in all respects as trustees. The authority shall keep suitable and proper books and records of all receipts, income, and expenditures of every kind and shall submit for inspection all of the books, together with a proper statement of the authority's financial position, once a year on or about December 31 to the state auditor and to the Jekyll Island—State Park Authority Oversight Committee. The books and records shall be inspected and audited by the state auditor at least once in each year. The authority shall also submit a quarterly summary of each lease and contract agreement involving an amount in excess of $50,000.00 to the legislative oversight committee. Upon request, a copy of the lease or contract agreement or other documents so requested shall be provided to the members of the oversight committee.

(b) There is created as a joint committee of the General Assembly the Jekyll Island—State Park Authority Oversight Committee to be composed of three members of the House of Representatives appointed by the Speaker of the House, one of whom shall be from the House Committee on State Properties, and three members of the Senate appointed by the President of the Senate, one of whom shall be from the

Senate Committee on State Institutions and Property. The members of the committee shall serve two-year terms concurrent with their terms as members of the General Assembly. The chairperson of the committee shall be appointed by the President of the Senate from the membership of the committee, and the vice chairperson of the committee shall be appointed by the Speaker of the House from the membership of the committee during odd-numbered years. The chairperson of the committee shall be appointed by the Speaker of the House from the membership of the committee, and the vice chairperson of the committee shall be appointed by the President of the Senate from the membership of the committee during even-numbered years. The chairperson and vice chairperson shall serve terms of one year beginning January 1, 2007. Vacancies in an appointed member's position or in the offices of chairperson or vice chairperson of the committee shall be filled for the unexpired term in the same manner as the original appointment. The committee shall advise the General Assembly regarding the authority's compliance with the provisions required by this part. The committee shall meet upon the call of the chairperson. (Ga. L. 1950, p. 152, § 4; Ga. L. 1995, p. 105, § 9; Ga. L. 2007, p. 711, § 5/HB 214; Ga. L. 2013, p. 141, § 12/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "House Committee on State Properties" for "House Committee on State Institutions and Property" in the first sentence of subsection (b).

12-3-243. Subdivision, improvement, lease, or sale of island by authority — Limitations on developed area; beaches to remain free and open; protected areas; disposition of proceeds of sale; creation of reserve fund; signing conveyances.

(a)(1)(A) The authority is empowered to convert no more than 1,675 acres of the total land area of Jekyll Island into developed land. All residual acreage shall forever be retained as undeveloped area. For purposes of this subparagraph, the 1,597 acres of Jekyll Island that, as of January 1, 2014, have been subdivided, leased, or improved according to the 2013 master plan shall be deemed as already converted to developed land.

(B) After July 1, 2014, undeveloped area shall be converted to developed land only as follows:

(i) Twelve acres to be used solely for the expansion of the existing campground;

(ii) Forty-six acres to be used solely for public health, public safety, or public recreation. As used in this division, the term

"public recreation" specifically excludes residential and commercial development; and

(iii) Twenty acres to be available for unrestricted uses.

(C) After July 1, 2014, the proposed conversion of any undeveloped area to developed land shall be subject to the amendment procedure outlined in subsection (c) of Code Section 12-3-243.1.

(2)(A) The authority may survey, subdivide, and lease any acreage which may be converted to developed land in accordance with paragraph (1) of this subsection, provided that the authority shall in no way sell or otherwise dispose of any riparian rights; and provided, further, that the beach areas of Jekyll Island shall never be leased but shall be kept free and open for the use of the people of this state.

(B) That portion of Jekyll Island lying south of 31 degrees, 1 minute, 34 seconds north latitude as such latitude is depicted on the 1993 USGS topographic survey 7.5 minute series quadrangle map shall always be retained as undeveloped area, and the authority shall not enter into, renew, or extend any agreement or otherwise take any action regarding such southern portion of the island on or after May 30, 2007, except as otherwise provided in this subparagraph. The removal of any improvement on such southern portion of the island which was completed prior to May 30, 2007, shall not be required. Upon the expiration or termination of any lease of a lot for a single-family residence on such southern portion of the island, the authority may again lease such lot to the same or another lessee for a single-family residence or noncommercial purpose or the authority may set aside the lot for public use; but the lot shall not be further subdivided, and the authority shall not lease such lot for any multifamily residence or commercial purpose. Those properties used for the Jekyll Island 4-H center and soccer complex may continue to be used and improved for the same or similar purposes under an extension or renewal of an existing lease or under a new lease. This subparagraph shall not prohibit the construction and use of any public bicycle trails, public nature trails, or public picnic areas on such southern portion of the island by the authority. This subparagraph shall not be applied to impair the obligation of any valid contract entered into prior to May 30, 2007.

(b) The authority shall deduct and retain as income from the amounts received for any sales of lots the value of its leasehold estate in such property, which shall be determined by agreement between the authority and the Governor. The remainder of such amounts shall be paid into the state treasury to the credit of the general fund. Ninety

percent of the income received by the authority from the sale of lots shall be paid into a reserve fund to be set up by the authority to be used for general improvements or capital improvements, or both, on Jekyll Island.

(c) All conveyances for the sale of lots shall be signed by the authority on its own behalf and by the Governor on behalf of the state. (Ga. L. 1950, p. 152, § 10; Ga. L. 1952, p. 276, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 261, § 2; Ga. L. 1957, p. 608, § 2; Ga. L. 1971, p. 452, § 1; Ga. L. 1995, p. 105, § 12; Ga. L. 2007, p. 711, § 7/HB 214; Ga. L. 2014, p. 64, § 2/HB 715; Ga. L. 2014, p. 69, § 2/SB 296.)

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, rewrote subsection (a), which read: "(a)(1) The authority is empowered to survey, subdivide, improve, and lease or sell to the extent and in the manner provided in this part, as subdivided and improved, not more than 35 percent of the land area of Jekyll Island which lies above water at mean high tide, provided that the authority shall in no way sell or otherwise dispose of any riparian rights; and provided, further, that the beach areas of Jekyll Island will never be sold but will be kept free and open for the use of the people of the state.

"(2)(A) The authority shall not survey, subdivide, improve, lease, sell, develop, or otherwise cause a project to be constructed on the 65 percent of the land area of Jekyll Island which the authority is not empowered to survey, subdivide, improve, and lease or sell pursuant to paragraph (1) of this subsection; provided, however, that nothing in this paragraph shall be construed as to require the removal of any improvement on such land area which was completed on March 14, 1995.

"(B) That portion of Jekyll Island lying south of 31 degrees, 1 minute, 34 seconds north latitude as such latitude is depicted on the 1993 USGS topographic survey 7.5 minute series quadrangle map shall always be included within the area of Jekyll Island protected by this paragraph, and the authority shall not enter into, renew, or extend any agreement or otherwise take any action regarding such southern portion of the island in violation of this paragraph on or after May 30, 2007, except as otherwise provided in this subparagraph. The removal of any improvement on such southern portion of the island which was completed prior to May 30, 2007, shall not be required. Upon the expiration or termination of any lease of a lot for a single-family residence on such southern portion of the island, the authority may again lease such lot to the same or another lessee for a single-family residence or noncommercial purpose or the authority may set aside the lot for public use; but the lot shall not be further subdivided, and the authority shall not lease such lot for any multifamily residence or commercial purpose. Those properties used for the Jekyll Island 4-H center and soccer complex may continue to be used and improved for the same or similar purposes under an extension or renewal of an existing lease or under a new lease. This subparagraph shall not prohibit the construction and use of any public bicycle trails, public nature trails, or public picnic areas on such southern portion of the island by the authority. This subparagraph shall not be applied to impair the obligation of any valid contract entered into prior to May 30, 2007." The second 2014 amendment, effective July 1, 2014, made identical changes.

OPINIONS OF THE ATTORNEY GENERAL

Mean high tide controls. — Jekyll Island State Park Authority does not have discretion to adopt the "65/35 Task Force" Recommendation to the extent that it uses a measurement reference point other than Mean High Tide. Any proposal to modify

the 1996 Master Plan so as to increase substantially the measured land area of the island be thoroughly evaluated in a public process and finally adopted only after the General Assembly has been given the opportunity to weigh in on the proposal. 2013 Op. Att'y Gen. No. 13-2.

12-3-243.1. Master plan as to Jekyll Island; maintenance; contents; adherence to plan; amendments.

(a) The authority shall maintain a master plan for the management, preservation, protection, and development of Jekyll Island. The master plan shall delineate, based upon aerial survey, the present and permitted future uses of the land area of Jekyll Island and shall designate areas to be managed as environmentally sensitive, historically sensitive, and active use areas.

(b) The authority, in the exercise of its authority to develop, manage, preserve, and protect Jekyll Island, shall be guided by and shall adhere to the master plan as the same may from time to time be amended as provided in subsection (c) of this Code section.

(c) The authority may, from time to time, amend the master plan but only in compliance with the following procedure:

(1) Any proposed amendment to the master plan shall be described in written form and, if capable of such description, in visual form and presented publicly at a regular meeting of the authority;

(2) After the proposed amendment is presented publicly at a regular meeting of the authority, a brief summary of the proposed amendment shall be advertised in the legal organs of Glynn and Fulton counties, distributed to the media by news release, and published in appropriate publications of the authority. Each such advertisement, news release, and publication shall also contain:

(A) The time and place of the public hearing on the proposed amendment, which public hearing shall be held no earlier than 15 days after the latest publication of the advertisement in the legal organ of Glynn or Fulton County as required by this paragraph;

(B) Directions as to the manner of receiving comments from the public regarding the proposed amendment; and

(C) The date on which the meeting of the authority at which the proposed amendment will be considered for approval or rejection, which meeting shall not be held any sooner than 30 days after the meeting of the authority at which the proposed amendment was announced pursuant to paragraph (1) of this subsection;

(3) The authority shall transmit by certified mail or personal service copies of the information required by paragraph (2) of this subsection and a complete copy of the proposed amendment to the

Speaker of the House, President of the Senate, members of the Jekyll Island-State Park Authority Oversight Committee, and Office of Legislative Counsel at least 60 days prior to the date of the meeting at which the proposed amendment will be considered. The presiding officers of each house, or the Office of Legislative Counsel if a presiding officer is unavailable, shall then provide copies to any member of the General Assembly who makes, or has made, a standing written request;

(4) In the event the Jekyll Island-State Park Authority Oversight Committee files an objection to a proposed amendment to the master plan with the chairperson of the authority prior to the authority's taking action on the proposed amendment, then the same shall be stayed. Thereafter, by introduction of a resolution to consider the committee's objection within the first 30 days of the next regular session of the General Assembly, the objection may be considered for ratification by the General Assembly. In the event the resolution is adopted by a vote of two-thirds of the members of each branch, the amendment to the master plan shall not be adopted by the authority. In the event the resolution is ratified by a vote of less than two-thirds of the members of either house, the resolution shall be submitted to the Governor for approval or veto. In the event the resolution fails to pass both houses or is vetoed by the Governor, the amendment to the master plan may be adopted by the authority and the stay of the committee shall be lifted. In the event of the Governor's approval of the resolution, the amendment to the master plan shall be prohibited;

(5) Any proposed development of the 78 acres available for development under subparagraph (a)(1)(B) of Code Section 12-3-243 shall be surveyed and marked at least seven days prior to the public hearing required by paragraph (2) of this subsection in such a fashion as to be readily discernible on the ground by members of the public; and

(6) At the meeting of the authority which has been identified in the advertisement required by paragraph (2) of this subsection as the meeting to consider the approval or rejection of the proposed amendment, the authority shall consider in an open and public meeting the proposed amendment to the master plan which, if approved, shall become a part of the master plan, subject, however, to the provisions of paragraph (4) of this subsection. (Code 1981, § 12-3-243.1, enacted by Ga. L. 1995, p. 105, § 13; Ga. L. 1996, p. 6, § 12; Ga. L. 2001, p. 4, § 12; Ga. L. 2007, p. 711, § 8/HB 214; Ga. L. 2014, p. 64, § 3/HB 715; Ga. L. 2014, p. 69, § 3/SB 296.)

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, in subsection (a), substituted "shall maintain" for "shall, on or before July 1, 1996, cause to be created" in the first sentence, deleted "which lies above water at mean

high tide" following "Jekyll Island" in the second sentence, and deleted the third and fourth sentences, which read: "The master plan shall also delineate the boundaries of the area or areas delineated on the master plan as the 65 percent of the land area of Jekyll Island which lies above water at mean high tide and over which the authority has no power to improve, lease, or sell pursuant to subsection (a) of Code Section 12-3-243. If the aerial survey demonstrates that the percentage of undeveloped land on Jekyll Island is presently less than 65 percent, then no further development of undeveloped land shall be permitted in the master plan."; deleted former subsection (b), which read: "In the creation of the master plan, the authority shall, after preparation of a preliminary plan, give notice of the existence of the preliminary plan in the legal organs of Glynn and Fulton counties and in at least two newspapers of state-wide general circulation not less than 60 days prior to the meeting of the authority at which the preliminary plan is to be considered for final adoption. After giving this notice, the authority shall hold a public hearing at a convenient location on Jekyll Island and receive and consider such oral and written comments on the preliminary plan as may be presented."; redesignated former subsections (c) and (d) as present subsections (b) and (c), respectively; substituted "subsection (c)" for "subsection (d)" in subsection (b); and substituted "development of the 78 acres available for development under subparagraph (a)(1)(B) of Code Section 12-3-243" for "changes to the boundaries of the area or areas delineated on the master plan as the 65 percent of the land area of Jekyll Island which lies above water at mean high tide and over which the authority has no power to improve, lease, or sell pursuant to subsection (a) of Code Section 12-3-243" in paragraph (c)(5). The second 2014 amendment, effective July 1, 2014, made identical changes.

OPINIONS OF THE ATTORNEY GENERAL

Mean high tide controls. — Jekyll Island State Park Authority does not have discretion to adopt the "65/35 Task Force" Recommendation to the extent that it uses a measurement reference point other than Mean High Tide. Any proposal to modify the 1996 Master Plan so as to increase substantially the measured land area of the island be thoroughly evaluated in a public process and finally adopted only after the General Assembly has been given the opportunity to weigh in on the proposal. 2013 Op. Att'y Gen. No. 13-2.

Part 5

The Great Park Authority

12-3-390 through 12-3-397.

Reserved. Repealed by Ga. L. 1980, p. 328, § 8, effective July 1, 1983.

Editor's notes. — Ga. L. 2013, p. 141, § 12/HB 79, reserved the designation of this part, effective April 24, 2013.

PART 6

OCONEE RIVER GREENWAY AUTHORITY

12-3-402. Creation; membership; compensation; qualifications; accountabilities; assignment.

(a) There is created a body corporate and politic to be known as the Oconee River Greenway Authority which shall be deemed to be an instrumentality of the State of Georgia and a public corporation; and by that name, style, and title such body may contract and be contracted with, sue and be sued, implead and be impleaded, and complain and defend in all courts of this state.

(b) The authority shall consist of the commissioner of natural resources or the designee thereof, the director of the State Forestry Commission or the designee thereof, the mayor of Milledgeville, the president of Georgia Military College, the chairperson of the governing authority of each county which is in the geographic jurisdiction of the authority or the designee thereof, and no more than four residents of each county which is in the geographic jurisdiction of the authority who have training or experience in biology, botany, or environmental science and who shall be appointed by the chairperson of the governing authority of such county.

(c) The authority shall elect its own officers. No vacancy on the authority shall impair the right of the quorum to exercise all rights and perform all duties of the authority.

(d) The members of the authority shall receive no compensation for their services on the authority but shall be reimbursed for actual expenses incurred while discharging the duties imposed upon them by this part.

(e) The authority shall have perpetual existence. Any change in name or composition of the authority shall in no way affect the vested rights of any person under this part or impair the obligations of any contracts existing under this part.

(f) The members of the authority shall be accountable in all respects as trustees. The authority shall keep suitable and proper books and records of all receipts, income, and expenditures of every kind and shall submit for inspection all the books, together with the proper statement of the authority's financial position, to the state auditor.

(g) The authority is assigned to the Department of Natural Resources for administrative purposes only in accordance with Code Section 50-4-3. (Code 1981, § 12-3-402, enacted by Ga. L. 2002, p. 820, § 1; Ga. L. 2003, p. 448, § 2; Ga. L. 2013, p. 777, § 1/HB 177.)

The 2013 amendment, effective July 1, 2013, substituted "no more than four residents" for "two residents" near the middle of subsection (b).

CHAPTER 4

MINERAL RESOURCES AND CAVES

Article 2
Mining and Drilling
PART 3
SURFACE MINING

ARTICLE 2

MINING AND DRILLING

PART 3

SURFACE MINING

12-4-72. Definitions.

As used in this part, the term:

(1) "Affected land" means the area of land which has been subjected to surface mining, or upon which overburden has been deposited, or both; provided, however, "affected land" shall not be construed to include land upon which overburden is deposited if, in the opinion of the division, the disposition of such overburden amounts to reclamation of a previously mined area.

(1.1) "Borrow pit" means an excavated area where naturally occurring earthen materials are to be removed for use as ordinary fill at another location. Such term shall not include excavated areas of fewer than five acres which are incidental to forestry land management and from which no earthen material is removed for sale.

(2) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(3) "Government securities" means obligations of the United States or of the State of Georgia, or any bureau, agency, or authority thereof, which are fully guaranteed as to the principal and interest by the United States or the State of Georgia.

(4) "Inspector" means any authorized employee of the Environmental Protection Division who is responsible for the administration or enforcement of this part.

(5) "Mineral" means clay, stone, gravel, sand, phosphate, rock, metallic ore, and any other solid material or substance of commercial value found in natural deposits on or in the earth.

(6) "Mining land use plan" means an operator's written proposal for accomplishing land use objectives on the affected land. The term shall include, but not be limited to, an operator's plans prior to, during, and following active mining for erosion and sedimentation control, protection of properties on the National Register of Historic Places, grading, disposal of refuse, reclamation and revegetation, and the time of completion of the plan.

(7) "Mining operator" means any person, firm, partnership, joint venture, association, corporation, municipality, or county engaged in or controlling one or more surface mining operations.

(8) "Overburden" means all of the earth and other materials which lie above natural deposits of ores or minerals, and includes all earth and other materials disturbed from their natural state in the process of surface mining.

(9) "Peak" means a projecting point of overburden removed from its natural position and deposited elsewhere in the process of surface mining.

(10) "Pit" means a tract of land from which overburden has been or is being removed for the purpose of surface mining.

(11) "Reclamation" means the reconditioning or rehabilitation of affected land under an approved mining land use plan.

(12) "Refuse" means all waste material exclusive of overburden directly connected with the mining, cleaning, and preparation of substances mined by surface mining.

(13) "Ridge" means a lengthened elevation of overburden removed from its natural position and deposited elsewhere in the process of surface mining.

(14) "Spoil bank" means overburden removed from its natural position and deposited elsewhere in the process of surface mining.

(15) "Surface mining" means any activity constituting all or part of a process for the removal of minerals, ores, and other solid matter for sale or for processing or for consumption in the regular operation of a business. Tunnels, shafts, borrow pits of less than 1.1 disturbed acres, and dimension stone quarries shall not be considered to be

surface mining. (Ga. L. 1968, p. 9, § 3; Ga. L. 1971, p. 200, §§ 1, 2; Ga. L. 1972, p. 996, §§ 1, 2; Ga. L. 1992, p. 1098, § 1; Ga. L. 1998, p. 168, §§ 1, 2; Ga. L. 2013, p. 593, § 1/SB 156.)

The 2013 amendment, effective July 1, 2013, added the last sentence in paragraph (1.1).

CHAPTER 5

WATER RESOURCES

ARTICLE 1

GENERAL PROVISIONS

12-5-9. Georgia Geospatial Advisory Council.

(a) As used in this Code section, the term:

(1) "Director" means the director of the division.

(2) "Division" means the Environmental Protection Division of the department.

(b) It is the intent of the General Assembly to provide the general public with access to reliable geospatial data, including but not limited to flood map modernization. Currently, Georgia lacks many of the components which would provide for reliable data such as geospatial coordination and collaboration, policies, standards, state-wide geospatial datasets, current inventory, state-wide license agreements, business and strategic plans, trained work force, data life cycle support, and contract and program management support.

(c)(1) In order to provide reliable geospatial data to the public, there shall be created the Georgia Geospatial Advisory Council. The division shall coordinate the creation of such council. The division shall coordinate with state executive branch departments and agencies to appoint members of the council, which may consist of representatives from state departments and agencies, local governments, universities, regional commissions, or any other entity the division determines to be a stakeholder active in the development or consumption of reliable geospatial resources.

(2) The council shall meet initially upon the call of the director and shall elect a chairperson at the initial meeting. Subsequent meetings shall be called by the chairperson. The members of the council shall serve at the pleasure of the director. Councilmembers shall receive no compensation for their services as members of the council, but their travel expenses, if any, related to the performance of their official duties may be covered by the departments, agencies, or organizations they represent.

(3) The council shall audit Georgia's geospatial capabilities at county, regional, and state levels. The audit shall contain a complete status update and recommendations for utilizing the geospatial capabilities in Georgia to meet Federal Emergency Management Agency notification requirements, recommendations for moving forward to achieve governmental data interoperability and enhanced delivery of services to Georgia citizens through the geospatial approach, and any other information determined by the council to be necessary for the advancement of geospatial technology.

(4) The council shall closely coordinate its efforts with the Georgia Technology Authority to ensure compliance with all state and federal standards, contracts, and procedures.

(5) The reports generated by the council shall be made available on an annual basis by the department to the members of the General Assembly, all departments and agencies of state government, and all county and municipal governments and shall be posted on the Internet website of the department.

(d) The Board of Natural Resources shall promulgate such rules and regulations as may be reasonable and necessary for the administration of this Code section.

(e) This Code section shall stand repealed on June 30, 2017. (Code 1981, § 12-5-9, enacted by Ga. L. 2014, p. 402, § 1/SB 361.)

Effective date. — This Code section became effective July 1, 2014.

Editor's notes. — This Code section formerly pertained to the Georgia Geospatial Advisory Council. The former Code section was based on Code 1981, § 12-5-9, enacted by Ga. L. 2010, p. 96, § 1/HB 169 and was repealed by Ga. L. 2010, p. 96, § 1/HB 169, effective June 30, 2012.

ARTICLE 2

CONTROL OF WATER POLLUTION AND SURFACE-WATER USE

12-5-20. Short title.

JUDICIAL DECISIONS

Exclusion of evidence relevant to violations. — Trial court did not err in denying the defendant's motion in limine to exclude evidence relating to the defendant's violations of the Georgia Water Quality Control Act, O.C.G.A. § 12-5-20 et seq., and the Sedimentation Control Act, O.C.G.A. §§ 12-7-2 and 12-7-6(a), because the evidence was relevant to the plaintiffs' negligence per se claims. Pulte Home Corp. v. Simerly, 322 Ga. App. 699, 746 S.E.2d 173 (2013).

12-5-30. Permits for construction, modification, or operation of facilities which discharge pollutants into waters; permits for discharge of dredged or fill material into waters and wetlands; participation in National Pollution Discharge Elimination System.

JUDICIAL DECISIONS

Cited in Pulte Home Corp. v. Simerly, 322 Ga. App. 699, 746 S.E.2d 173 (2013).

12-5-30.3. Sludge land application systems.

(a) As used in this Code section, the term:

(1) "Sludge" means the solid or semisolid residue generated at a waste-water treatment or pretreatment plant. Such term specifically excludes treated effluent, septage, and sludge that has been treated to further reduce pathogens by such processes as composting, heat drying, or heat treating.

(2) "Sludge land application" means the placement of sludge on or under the ground surface for the purpose of sludge disposal, soil conditioning, or agricultural enhancement. Such term specifically excludes the disposal of sludge in a permitted landfill.

(b)(1) No person shall operate a sludge land application system without first securing the approval of the director. The director may include this approval and approval requirements in a permit issued under Code Section 12-5-30.

(2) Prior to the issuance of any permit for a sludge land application system, the director shall require written verification to be furnished by the applicant that the proposed facility complies with applicable local zoning or land use ordinances, if any.

(c) The Board of Natural Resources shall adopt technical regulations governing sludge land application and procedural regulations for approval of sludge land application systems, including public notice and public hearing requirements. All public hearings shall be conducted by the division and the applicant for the permit within the jurisdiction of the local governing authority where the proposed sludge land application site is located.

(d) The local governing authority in which a sludge land application site is located may assess upon the generator of the sludge and the owner of the sludge land application site reasonable fees for environmental monitoring of the site and may hire persons to monitor the site. Payment of the assessed fee shall be made prior to the application of sludge. Failure to pay such fees, if assessed, shall be grounds for the local governing authority to seek an injunction to stop the land application of sludge. The provisions of this section shall not apply to the land application of sludge which is generated by the treatment of industrial process waste water only.

(e) Any person who violates this Code section, regulations adopted by the Board of Natural Resources pursuant to this Code section, or any permit or approval requirements of the director issued pursuant to this Code section shall be subject to the civil penalties and the criminal penalties contained in Code Sections 12-5-52 and 12-5-53. (Code 1981,

§ 12-5-30.3, enacted by Ga. L. 1993, p. 730, § 1; Ga. L. 2014, p. 598, § 1/HB 741.)

The 2014 amendment, effective April 23, 2014, inserted "that has been" in the second sentence of paragraph (a)(1); designated the existing provisions of subsection (b) as paragraph (b)(1) and added paragraph (b)(2); added the second sentence in subsection (c); and, in subsection (d), inserted "upon" near the middle of the first sentence and substituted "this section" for "this subsection" near the beginning of the last sentence.

12-5-30.4. Establishment of water emergency response procedures.

(a) Whenever any substance which would endanger the health or property of downstream users of the waters of this state is discharged into such waters, it shall be the duty of any person in charge of such substance to immediately notify the division of the location and nature of the discharge and to immediately take all reasonable steps to prevent injury to the health or property of such downstream users.

(b) The division shall immediately conduct an initial investigation upon receiving any notification made pursuant to this Code section or subsection (a) of Code Section 12-14-3 or by a member of the public who observes an emergency situation or discharge to determine if such notification satisfies the criteria described in subsection (a) of this Code section.

(c) If the division determines that there is a threat to the health or property of downstream users of the waters of this state, the division shall as soon as possible, but not more than 24 hours after such determination, notify and consult with the Georgia Emergency Management Agency, the appropriate local emergency management agency, the appropriate local county health department, and other appropriate divisions within the department as necessary to determine if it is necessary to prepare and distribute a public notice concerning such threat. Upon notification by the division, the local emergency management agency or the local county health department shall prepare and post such public notice through electronic media and print. Such public notice shall be located at places where the public regularly uses the waters of this state or seeks information about such waters.

(d) The division shall ensure that immediate corrective action is initiated to the maximum extent practicable and as otherwise authorized by this title in order to prevent further danger to the health or property of downstream users.

(e) The division shall establish a protocol, to be reviewed every five years, for coordinated responses to discharges that create emergency situations and shall coordinate with the appropriate emergency re-

sponse agencies to provide for continual emergency response so as to most efficiently and effectively meet the needs of affected communities. The division may provide training to state and local emergency response agencies to further the purposes of this Code section.

(f) Nothing in this Code section shall prevent any local governmental entity from taking any actions within its authority to protect public health.

(g) The department shall promulgate any rules and regulations necessary to implement and administer this Code section on or before December 1, 2014. (Code 1981, § 12-5-30.4, enacted by Ga. L. 2014, p. hb0549, § 1/HB 549.)

Effective date. — This Code section became effective July 1, 2014.

ARTICLE 4

COASTAL WATERS, BEACHES, AND SAND DUNES

Part 2

Shore Protection

12-5-230. Short title.

JUDICIAL DECISIONS

Sovereign immunity barred injunctive relief. — In a suit brought by an organization seeking to enjoin the Georgia Department of Natural Resources from issuing letters of permission authorizing land alterations, the appellate court erred by reversing the dismissal of the organization's claim for injunctive relief because sovereign immunity barred injunctive relief against the State at common law and the plain language of the Shore Protection Act, O.C.G.A. § 12-5-245, did not provide for a specific waiver of governmental immunity. Ga. Dep't of Natural Res. v. Ctr. for a Sustainable Coast, Inc., 294 Ga. 593, 755 S.E.2d 184 (2014).

Cited in Ctr. for a Sustainable Coast, Inc. v. Ga. Dep't of Natural Res., 319 Ga. App. 205, 734 S.E.2d 206 (2012).

12-5-231. Legislative findings and declarations.

JUDICIAL DECISIONS

Sovereign immunity barred injunctive relief. — In a suit brought by an organization seeking to enjoin the Georgia Department of Natural Resources from issuing letters of permission authorizing land alterations, the appellate court erred by reversing the dismissal of the organization's claim for injunctive relief because sovereign immunity barred injunctive relief against the state at common law and the plain language of the Shore Protection Act, O.C.G.A. § 12-5-245, did not provide for a specific waiver of governmental immunity. Ga. Dep't of Natural Res. v. Ctr. for a Sustainable Coast, Inc., 294 Ga. 593, 755 S.E.2d 184 (2014).

12-5-232. Definitions.

As used in this part, the term:

(1) "Applicant" means any person who files an application for a permit under this part.

(2) "Bare sand surface" means an area of nearly level unconsolidated sand landward of the ordinary high-water mark which does not contain sufficient indigenous vegetation to maintain its stability.

(3) "Barrier islands" means the following islands: Daufuskie, Tybee, Little Tybee, Petit Chou, Williamson, Wassaw, Ossabaw, St. Catherines, Blackbeard, Sapelo, Cabretta, Wolf, Egg, Little St. Simons, Sea, St. Simons, Jekyll, Little Cumberland, Cumberland, Amelia, and any ocean-facing island which is formed in the future and which has multiple ridges of sand, gravel, or mud built on the seashore by waves and currents; ridges generally parallel to the shore; and areas of vegetation.

(4) "Beach" means a zone of unconsolidated material that extends landward from the ordinary low-water mark to the line of permanent vegetation.

(5) "Board" means the Board of Natural Resources.

(6) "Boardwalk" or "crosswalk" means a nonhabitable structure, usually made of wood and without a paved or poured surface of any kind, whose primary purpose is to provide access to or use of the beach, while maintaining the stability of any sand dunes it traverses.

(6.1) "Commissioner" means the commissioner of natural resources.

(7) "Committee" means the Shore Protection Committee.

(8) "Dynamic dune field" means the dynamic area of beach and sand dunes, varying in height and width, the ocean boundary of which extends to the ordinary high-water mark and the landward boundary of which is the first occurrence either of live native trees 20 feet in height or greater or of a structure existing on July 1, 1979. The landward boundary of the dynamic dune field shall be the seaward most line connecting any such tree or structure as set forth in this part to any other such tree or structure if the distance between the two is a reasonable distance not to exceed 250 feet. In determining what is a reasonable distance for purposes of this paragraph, topography, dune stability, vegetation, lot configuration, existing structures, distance from the ordinary high-water mark, and other relevant information shall be taken into consideration in order to conserve the vital functions of the sand-sharing system. If a real

estate appraiser certified pursuant to Chapter 39A of Title 43 determines that an existing structure, shoreline engineering activity, or other alteration which forms part of the landward boundary of the dynamic dune field has been more than 80 percent destroyed by storm driven water or erosion, the landward boundary of the dynamic dune field shall be determined as though such structure had not been in existence on July 1, 1979.

(9) "Erosion" means the wearing away of land whereby materials are removed from the sand dunes, beaches, and shore face by natural processes, including, but not limited to, wave action, tidal currents, littoral currents, and wind.

(9.1) "Letter of permission" means written authorization from the department to conduct a proposed activity in an area subject to the jurisdiction of this part, provided such activity is either within the physical perimeter of an existing serviceable project or involves the construction and removal of a project or other temporary activity that concludes within six months, inclusive of the time needed to return all affected areas to a condition approximate to, or better than, that which existed before commencement of the activity.

(10) "Local unit of government" means a county, as defined by Code Section 36-1-1, or an incorporated municipality, as defined by Code Section 36-40-21, or any combination thereof which has been authorized by an Act of the General Assembly, any of which has within its jurisdiction any sand dune or beach.

(11) "Ordinary high-water mark" means the position along the shore of the mean monthly spring high tide reached during the most recent tidal epoch. This term is not synonymous with "mean" high-water mark.

(12) "Ordinary low-water mark" means the position along the shore of the mean monthly spring low tide reached during the most recent tidal epoch. This term is not synonymous with "mean" low-water mark.

(13) "Permit-issuing authority" means the Shore Protection Committee or a local unit of government which has adopted a program of shore protection which meets the standards of this part and which has been certified by the board as an approved program.

(14) "Person" means any association, individual, partnership, corporation, public or private authority, or local unit of government, and shall include the State of Georgia and all its departments, boards, bureaus, commissions, authorities, any other government agencies or instrumentalities, and any other legal entity.

(15) "Sand dunes" means mounds of sand deposited along a coastline by wind action, which mounds are often covered with sparse,

pioneer vegetation and are located landward of the ordinary high-water mark and may extend into the tree line.

(16) "Sand-sharing system" means an interdependent sediment system composed of sand dunes, beaches, and offshore bars and shoals.

(16.1) "Serviceable" means usable as is or with only minor maintenance, but not so degraded as to essentially require reconstruction, as determined by the department.

(17) "Shoreline engineering activity" means an activity which encompasses any artificial method of altering the natural topography or vegetation of the sand dunes, beaches, bars, submerged shoreline lands, and other components of the sand-sharing system. This includes, but is not limited to, such activities as:

(A) Grading, clearing vegetation, excavating earth, or landscaping, where such activities are for purposes other than erection of a structure;

(B) Artificial dune construction;

(C) Beach restoration or renourishment;

(D) Erosion control activities, including, but not limited to, the construction and maintenance of groins and jetties;

(E) Shoreline stabilization activities, including, but not limited to, the construction and maintenance of seawalls and riprap protection; and

(F) The construction and maintenance of pipelines and piers.

(18) "Stable sand dune" means a sand dune that is maintained in a steady state of neither erosion nor accretion by indigenous vegetative cover.

(19) "Structure" means an institutional, residential, commercial, or industrial building.

(20) "Submerged shoreline lands" means the intertidal and submerged lands from the ordinary high-water mark seaward to the limit of the state's jurisdiction in the Atlantic Ocean.

(21) "Tidal epoch" means the variations in the major tide-producing forces that result from changes in the moon's phase, declination of the earth, distance of the moon from the earth, and regression of the moon's modes, and which go through one complete cycle in approximately 19 years. (Code 1981, § 12-5-232, enacted by Ga. L. 1992, p. 1362, § 1; Ga. L. 2013, p. 874, § 1/HB 402.)

The 2013 amendment, effective July 1, 2013, added paragraphs (6.1), (9.1), and (16.1).

JUDICIAL DECISIONS

Sovereign immunity barred injunctive relief. — In a suit brought by an organization seeking to enjoin the Georgia Department of Natural Resources from issuing letters of permission authorizing land alterations, the appellate court erred by reversing the dismissal of the organization's claim for injunctive relief because sovereign immunity barred injunctive relief against the state at common law and the plain language of the Shore Protection Act, O.C.G.A. § 12-5-245, did not provide for a specific waiver of governmental immunity. Ga. Dep't of Natural Res. v. Ctr. for a Sustainable Coast, Inc., 294 Ga. 593, 755 S.E.2d 184 (2014).

12-5-234. Powers and duties of department.

(a) The department shall have the following authority:

(1) To administer and enforce this part and all rules, regulations, and orders issued pursuant to this part;

(2) To accept moneys from persons, government units, and private organizations;

(3) To conduct public hearings and to institute and to prosecute court actions as may be necessary to enforce compliance with this part and any rules and regulations promulgated pursuant to this part; provided, however, that all such actions shall be in the name of the department;

(4) To make reasonable inspections of the lands within jurisdiction of this part to ascertain whether the requirements of this part and the rules, regulations, and permits promulgated or issued pursuant to this part are faithfully complied with;

(5) To issue letters of permission and impose a reasonable fee for processing such letters of permission; and

(6) To exercise all incidental powers necessary to carry out the purposes of this part.

(b) The foregoing powers and duties may be exercised and performed by the department through such duly authorized agents and employees as it deems necessary and proper. (Code 1981, § 12-5-234, enacted by Ga. L. 1992, p. 1362, § 1; Ga. L. 2013, p. 874, § 2/HB 402.)

The 2013 amendment, effective July 1, 2013, deleted "and" from the end of paragraph (a)(4), added paragraph (a)(5), and redesignated former paragraph (a)(5) as paragraph (a)(6).

JUDICIAL DECISIONS

Sovereign immunity barred injunctive relief. — In a suit brought by an organization seeking to enjoin the Georgia Department of Natural Resources from issuing letters of permission authorizing land alterations, the appellate court erred by reversing the dismissal of the organization's claim for injunctive relief because sovereign immunity barred injunctive relief against the state at common law and the plain language of the Shore Protection Act, O.C.G.A. § 12-5-245, did not provide for a specific waiver of governmental immunity. Ga. Dep't of Natural Res. v. Ctr. for a Sustainable Coast, Inc., 294 Ga. 593, 755 S.E.2d 184 (2014).

12-5-235. Shore Protection Committee.

JUDICIAL DECISIONS

Cited in Ctr. for a Sustainable Coast, Inc. v. Ga. Dep't of Natural Res., 319 Ga. App. 205, 734 S.E.2d 206 (2012); Ga. Dep't of Natural Res. v. Ctr. for a Sustainable Coast, Inc., 294 Ga. 593, 755 S.E.2d 184 (2014).

12-5-237. Permit required; exceptions.

(a) No person shall construct or erect any structure or construct, erect, conduct, or engage in any shoreline engineering activity or engage in any land alteration which alters the natural topography or vegetation of any area within the jurisdiction of this part, except in accordance with the terms and conditions of a permit therefor issued in accordance with this part. A permit may authorize the construction or maintenance of the project proposed in an application. After construction of a project pursuant to a permit, the project may be maintained without an additional permit so long as it does not further alter the natural topography or vegetation of the site or increase the size or scope of the project, and remains in serviceable condition.

(b)(1) No permit shall be required for a structure, shoreline engineering activity, or land alteration which exists as of July 1, 1979, provided that a permit must be obtained for any modification which will have a greater adverse effect on the sand-sharing system or for any addition to or extension of such shoreline engineering activity, structure, or land alteration; provided, further, that, if any structure, shoreline engineering activity, or land alteration is more than 80 percent destroyed by wind, water, or erosion as determined by an appraisal of the fair market value by a real estate appraiser certified pursuant to Chapter 39A of Title 43, a permit is required for reconstruction.

(2) No permit shall be required for any activity conducted pursuant to a letter of permission. At least 15 days prior to the commencement of any activity authorized pursuant to a letter of permission, the department shall provide public notice describing such activity and

the location thereof; provided, however, that public notice shall not be required for any such activity that is necessary for public safety or the delivery of public services. (Code 1981, § 12-5-237, enacted by Ga. L. 1992, p. 1362, § 1; Ga. L. 2013, p. 874, § 3/HB 402.)

The 2013 amendment, effective July 1, 2013, in the third sentence of subsection (a), substituted "an additional permit" for "a permit", and added ", and remains in serviceable condition"; redesignated the existing provisions of subsection (b) as paragraph (b)(1); and added paragraph (b)(2).

JUDICIAL DECISIONS

Sovereign immunity barred injunctive relief. — In a suit brought by an organization seeking to enjoin the Georgia Department of Natural Resources from issuing letters of permission authorizing land alterations, the appellate court erred by reversing the dismissal of the organization's claim for injunctive relief because sovereign immunity barred injunctive relief against the state at common law and the plain language of the Shore Protection Act, O.C.G.A. § 12-5-245, did not provide for a specific waiver of governmental immunity. Ga. Dep't of Natural Res. v. Ctr. for a Sustainable Coast, Inc., 294 Ga. 593, 755 S.E.2d 184 (2014).

Permit requirement. — Trial court erred in dismissing claim for injunctive relief because the issuance of letters of permission by the Department of Natural Resources for activities that required a permit under the Shore Protection Act, O.C.G.A. § 12-5-237, were subject to challenge under O.C.G.A. § 12-5-245; the center's claim for declaratory relief from letters already issued was properly dismissed because a justiciable controversy no longer existed for which a declaratory judgment would have been appropriate. Ctr. for a Sustainable Coast, Inc. v. Ga. Dep't of Natural Res., 319 Ga. App. 205, 734 S.E.2d 206 (2012).

12-5-238. Form and contents of application for permit.

JUDICIAL DECISIONS

Sovereign immunity barred injunctive relief. — In a suit brought by an organization seeking to enjoin the Georgia Department of Natural Resources from issuing letters of permission authorizing land alterations, the appellate court erred by reversing the dismissal of the organization's claim for injunctive relief because sovereign immunity barred injunctive relief against the state at common law and the plain language of the Shore Protection Act, O.C.G.A. § 12-5-245, did not provide for a specific waiver of governmental immunity. Ga. Dep't of Natural Res. v. Ctr. for a Sustainable Coast, Inc., 294 Ga. 593, 755 S.E.2d 184 (2014).

Cited in Ctr. for a Sustainable Coast, Inc. v. Ga. Dep't of Natural Res., 319 Ga. App. 205, 734 S.E.2d 206 (2012).

12-5-239. Completion of permit; notice of proposed activity; requirements and restrictions regarding issuance of permit.

JUDICIAL DECISIONS

Sovereign immunity barred injunctive relief. — In a suit brought by an organization seeking to enjoin the Georgia Department of Natural Resources from

issuing letters of permission authorizing land alterations, the appellate court erred by reversing the dismissal of the organization's claim for injunctive relief because sovereign immunity barred injunctive relief against the state at common law and the plain language of the Shore Protection Act, O.C.G.A. § 12-5-245, did not provide for a specific waiver of governmental immunity. Ga. Dep't of Natural Res. v. Ctr. for a Sustainable Coast, Inc., 294 Ga. 593, 755 S.E.2d 184 (2014).

Cited in Ctr. for a Sustainable Coast, Inc. v. Ga. Dep't of Natural Res., 319 Ga. App. 205, 734 S.E.2d 206 (2012).

12-5-241. Local shore assistance programs.

JUDICIAL DECISIONS

Cited in Ctr. for a Sustainable Coast, Inc. v. Ga. Dep't of Natural Res., 319 Ga. App. 205, 734 S.E.2d 206 (2012).

12-5-245. Injunctive relief.

JUDICIAL DECISIONS

Sovereign immunity barred injunctive relief. — In a suit brought by an organization seeking to enjoin the Georgia Department of Natural Resources from issuing letters of permission authorizing land alterations, the appellate court erred by reversing the dismissal of the organization's claim for injunctive relief because sovereign immunity barred injunctive relief against the state at common law and the plain language of the Shore Protection Act, O.C.G.A. § 12-5-245, did not provide for a specific waiver of governmental immunity. Ga. Dep't of Natural Res. v. Ctr. for a Sustainable Coast, Inc., 294 Ga. 593, 755 S.E.2d 184 (2014).

Suit seeking injunctive relief proper. — Trial court erred in dismissing claim for injunctive relief because the issuance of letters of permission by the Department of Natural Resources for activities that required a permit under the Shore Protection Act, O.C.G.A. § 12-5-237, were subject to challenge under O.C.G.A. § 12-5-245; the center's claim for declaratory relief from letters already issued was properly dismissed because a justiciable controversy no longer existed for which a declaratory judgment would have been appropriate. Ctr. for a Sustainable Coast, Inc. v. Ga. Dep't of Natural Res., 319 Ga. App. 205, 734 S.E.2d 206 (2012).

Part 3

Preservation and Management of Coastal Zone

12-5-260 through 12-5-267.

Reserved. Repealed by Ga. L. 1979, p. 1302, § 4, effective July 1, 1984.

Editor's notes. — Ga. L. 2013, p. 141, § 12/HB 79, reserved the designation of this part, effective April 24, 2013.

Part 4

Coastal Marshlands

12-5-280. Short title.

Law reviews. — For article, "The Chevron Two-Step in Georgia's Administrative Law," see 46 Ga. L. Rev. 871 (2012). For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012).

12-5-282. Definitions.

As used in this part, the term:

(1) "Applicant" means any person who files an application under this part.

(2) "Board" means the Board of Natural Resources.

(3) "Coastal marshlands" or "marshlands" means any marshland intertidal area, mud flat, tidal water bottom, or salt marsh in the State of Georgia within the estuarine area of the state, whether or not the tidewaters reach the littoral areas through natural or artificial watercourses. "Vegetated marshlands" shall include those areas upon which grow one, but not necessarily all, of the following: salt marsh grass (Spartina alterniflora), black needlerush (Juncus roemerianus), saltmeadow cordgrass (Spartina patens), big cordgrass (Spartina cynosuroides), saltgrass (Distichlis spicata), coast dropseed (Sporobolus virginicus), bigelow glasswort (Salicornia bigelovii), woody glasswort (Salicornia virginica), saltwort (Batis maritima), sea lavender (Limonium nashii), sea oxeye (Borrichia frutescens), silverling (Baccharis halimifolia), false willow (Baccharis angustifolia), and high-tide bush (Iva frutescens). The occurrence and extent of salt marsh peat at the undisturbed surface shall be deemed to be conclusive evidence of the extent of a salt marsh or a part thereof.

(4) "Commissioner" means the commissioner of natural resources.

(5) "Committee" means the Coastal Marshlands Protection Committee created by this part.

(6) "Eligible person" means any person who is the owner of high land adjoining the state owned marshland or water bottoms, or combination thereof, sought to be leased by said person such that at least 100 percent of the landward boundary of the state owned marshland or water bottom, or combination thereof, sought to be leased is bordered by said adjoining high land.

(7) "Estuarine area" means all tidally influenced waters, marshes, and marshlands lying within a tide-elevation range from 5.6 feet above mean tide level and below.

(7.1) "Letter of permission" means written authorization from the department to conduct a proposed activity in an area subject to the jurisdiction of this part, provided such activity is either within the physical perimeter of an existing serviceable project or involves the construction and removal of a project or other temporary activity that concludes within six months, inclusive of the time needed to return all affected areas to a condition approximate to, or better than, that which existed prior to the commencement of such activity.

(8) "Live-aboard" means a floating vessel or other watercraft capable of safe, mechanically propelled navigation under average Georgia coastal wind and current conditions which is utilized as a human or animal abode and is located at a marina or a mooring area established by the department.

(9) "Minor alteration" means any change in the marshlands which, taken singularly or in combination with other changes, involve less than 0.10 acres. Minor alteration also includes renewal of permits previously issued by the committee.

(10) "Person" means any individual, partnership, corporation, municipal corporation, county, association, or public or private authority, and shall include the State of Georgia, its political subdivisions, and all its departments, boards, bureaus, commissions, or other agencies, unless specifically exempted by this part.

(11) "Political subdivision" means the governing authority of a county or a municipality in which the marshlands to be affected or any part thereof are located.

(12) "Private dock" means a structure built onto or over the marsh and submerged lands which is used for recreational fishing and other recreational activities, is not available to the public, does not have enclosures, and does not create a navigation hazard; provided, however, that a private dock may be covered and screened with wainscotting not higher than three feet and may be equipped with a hoist.

(13) "Serviceable" means usable as is or with only minor maintenance but not so degraded as to essentially require reconstruction, as determined by the department. (Ga. L. 1970, p. 939, § 2; Code 1981, § 12-5-281; Ga. L. 1982, p. 3, § 12; Ga. L. 1989, p. 574, § 1; Ga. L. 1990, p. 8, § 12; Code 1981, § 12-5-282, as redesignated by Ga. L. 1992, p. 2294, § 1; Ga. L. 2012, p. 1074, § 2/SB 319; Ga. L. 2013, p. 874, § 4/HB 402.)

The 2013 amendment, effective July 1, 2013, added paragraphs (7.1) and (13).

12-5-283. Coastal Marshlands Protection Committee created; members; powers; per diem and expenses; administrative hearings and review; permits for minor alterations.

JUDICIAL DECISIONS

Cited in Ctr. for a Sustainable Coast, Inc. v. Ga. Dep't of Natural Res., 319 Ga. App. 205, 734 S.E.2d 206 (2012).

12-5-284. Authority of department as to coastal marshlands generally.

(a) The department shall have the following authority:

(1) To administer and enforce this part and all rules, regulations, and orders promulgated under this part and to determine jurisdiction under this part;

(2) To accept moneys that are available from persons, government units, and private organizations;

(3) To conduct public hearings and institute and prosecute court actions as may be necessary to enforce compliance with this part and any rules and regulations promulgated hereunder, provided that all such actions shall be in the name of the department;

(4) To issue letters of permission and impose a reasonable fee for processing such letters of permission; and

(5) To exercise all incidental powers necessary to carry out the purposes of this part.

(b) The foregoing powers and duties may be exercised and performed by the department through such duly authorized agents and employees as it deems necessary and proper. (Ga. L. 1970, p. 939, § 4; Ga. L. 1972, p. 991, § 1; Code 1981, § 12-5-283; Code 1981, § 12-5-284, as redesignated by Ga. L. 1992, p. 2294, § 1; Ga. L. 2013, p. 874, § 5/HB 402.)

The 2013 amendment, effective July 1, 2013, deleted "and" from the end of paragraph (a)(3); added paragraph (a)(4); and redesignated former paragraph (a)(4) as paragraph (a)(5).

12-5-286. Permit required; application; notice; public hearing; issuance; denial; dynamic dune fields.

(a)(1) No person shall remove, fill, dredge, drain, or otherwise alter any marshlands or construct or locate any structure on or over marshlands in this state within the estuarine area thereof without first obtaining a permit from the committee or, in the case of minor

alteration of marshlands, the commissioner. A permit may authorize the construction or maintenance of the project proposed in an application. After construction pursuant to a permit, a project may be maintained without an additional permit so long as it does not further alter the natural topography or vegetation at the project site and remains in serviceable condition.

(2) No permit shall be required for any activity conducted pursuant to a letter of permission. At least 15 days prior to the commencement of any activity authorized pursuant to a letter of permission, the department shall provide public notice describing such activity and the location thereof; provided, however, that public notice shall not be required for any such activity that is necessary for public safety or the delivery of public services.

(b) Each application for such permit shall be properly executed and filed with the department on forms prescribed by the department and shall include:

(1) The name and address of the applicant;

(2) A plan or drawing showing the applicant's proposal and the manner or method by which such proposal shall be accomplished. Such plan shall identify the coastal marshlands affected;

(3) A plat of the area in which the proposed work will take place;

(4) A copy of the deed or other instrument under which the applicant claims title to the property or, if the applicant is not the owner, then a copy of the deed or other instrument under which the owner claims title together with written permission from the owner to carry out the project on his land. In lieu of a deed or other instrument referred to in this paragraph, the committee may accept some other reasonable evidence of ownership of the property in question or other lawful authority to make use of the property. The committee will not adjudicate title disputes concerning the property which is the subject of the application; provided, however, that the committee may decline to process an application when submitted documents show conflicting deeds;

(5) A list of all adjoining landowners together with such owners' addresses, provided that if the names or addresses of adjoining landowners cannot be determined, the applicant shall file in lieu thereof a sworn affidavit that a diligent search, including, without limitation, a search of the records of the county tax assessor's office, has been made but that the applicant was not able to ascertain the names or addresses, as the case may be, of adjoining landowners;

(6) A letter from the local governing authority of the political subdivision in which the property is located, stating that the applicant's proposal is not violative of any zoning law;

(7) A nonrefundable application fee to be set by the board in an amount necessary to defray the administrative cost of issuing such permit. Renewal fees shall be equal to application fees, which shall not exceed $1,000.00 for any one proposal and shall be paid to the department;

(8) A description from the applicant of alternative sites and why they are not feasible and a discussion of why the permit should be granted;

(9) A statement from the applicant that he has made inquiry to the appropriate authorities that the proposed project is not over a landfill or hazardous waste site and that the site is otherwise suitable for the proposed project;

(10) A copy of the water quality certification issued by the department if required for the proposed project;

(11) Certification by the applicant of adherence to soil and erosion control responsibilities if required for the proposed project; and

(12) Such additional information as is required by the committee to properly evaluate the application.

(c) A copy of each application for a permit shall be delivered to each member of the committee at least seven days prior to any meeting of the committee.

(d) The department, after receipt of an application, shall notify in writing all adjoining landowners that the application has been received. Such notice shall indicate the use the applicant proposes to make of the property. Should the applicant indicate that any adjoining landowner is unknown or that the address of such landowner is unknown, then the department shall, after receipt of a completed application, cause a notice of the proposed activity and a brief description of the affected land to be published in the legal organ of or a newspaper of general circulation in the county or counties in which such land lies. Cost of such publication shall be paid by the applicant. Should the property to be affected by the applicant be bordered on any side or on more than one side by other property of the applicant, the applicant shall supply the names and addresses of the nearest landowners whose land borders on his land. If the names or addresses, or both, of the nearest landowners cannot be ascertained, the applicant shall supply a sworn statement of diligent search as provided in this Code section. The landowners named by the applicant shall be notified either directly or by advertisement as provided in this Code section. The department may also make inquiry to adjoining landowners to ascertain whether or not there is objection to issuance of a permit.

(e) The committee shall provide notice of applications by either public notice distributed jointly with the United States Army Corps of

Engineers or public notice distributed by the committee. In no instance shall a public notice be issued for less than seven days prior to the meeting at which the committee reviews the subject of the public notice. Public notices shall be distributed to all persons who have requested to be placed on the mailing list. Such request shall be made in writing and shall be renewed in December of each year. Failure to renew the request shall result in the removal of such name from the mailing list.

(f) Whenever there appears to be sufficient public interest, the committee may call a public hearing.

(g) In passing upon the application for permit, the committee shall consider the public interest, which, for purposes of this part, shall be deemed to be the following considerations:

(1) Whether or not unreasonably harmful obstruction to or alteration of the natural flow of navigational water within the affected area will arise as a result of the proposal;

(2) Whether or not unreasonably harmful or increased erosion, shoaling of channels, or stagnant areas of water will be created; and

(3) Whether or not the granting of a permit and the completion of the applicant's proposal will unreasonably interfere with the conservation of fish, shrimp, oysters, crabs, clams, or other marine life, wildlife, or other resources, including but not limited to water and oxygen supply.

(h) It is the responsibility of the applicant to demonstrate to the committee that the proposed alteration is not contrary to the public interest and that no feasible alternative sites exist. If the committee finds that the application is not contrary to the public interest and no feasible alternative sites exist, as specified in this subsection, it shall issue to the applicant a permit. Such permit may be conditioned upon the applicant's amending the proposal to take whatever measures are necessary to protect the public interest.

(i) The committee shall act upon an application for a permit within 90 days after the application is complete; provided, however, that this provision may be waived upon the written request of the applicant. An application must be complete sufficiently in advance of the committee meeting at which the project will be considered to allow for public notice and evaluation by the department. An application is complete when it contains substantially all of the written information, documents, forms, fees, and materials required by this part.

(j) In the event a majority of the members of the committee determine that a permit should be denied, the application for permit shall be denied. Any applicant who is aggrieved or adversely affected thereby shall have the right to appeal as provided in Code Section 12-5-283.

(k) Should a majority of the members of the committee agree that a permit should be conditional, the permit shall be issued on such conditions as a majority of the committee directs. Any applicant who is aggrieved or adversely affected thereby shall have the right to appeal as provided in Code Section 12-5-283.

(l) Every permit shall require that the proposed project be completed within five years after the date of the issuance of the permit and such permit shall expire five years after the date of issuance. Such time may be extended an additional five years upon showing that all due efforts and diligence toward the completion of the work have been made. Any permit may be revoked by the committee for noncompliance with or for violation of its terms after written notice of intention to do so has been furnished to the holder thereof.

(m) A permit to alter marshlands that has been granted by the committee becomes final immediately upon issuance, but no construction or alteration may commence until the expiration of 30 days following the date of the committee meeting at which the application is approved; provided, however, that if a timely appeal is filed, no construction or alteration may commence until all administrative and judicial proceedings are terminated.

(n) Issuance of a permit under this part and construction of the permitted project shall not remove the designated property from the jurisdiction of this part. All changes in permitted uses which increase impacts to any land subject to the provisions of this part must be assessed by the committee to determine if the proposed change is consistent with this part and the permit. Each permitted alteration of marshlands shall be reviewed by the department on a five-year basis, or when noncompliance with the purpose for which the permit was issued is evident, to determine if the use of the marshland is consistent with the intent of this part. If the permit holder is found not to be in compliance with this part, the committee shall take action as authorized under Code Section 12-5-291.

(o) All plans, documents, and materials contained in any application for any permit required by this part shall be made a part of the permit, if granted, and conformance to such plans, documents, and materials shall be a condition of the permit. No change or deviation from any such plans, documents, or materials shall be permitted without the prior notification and approval of the committee.

(p) The permittee shall notify the department of completion of a project within 30 days of completion.

(q) If, prior to completion of review of an application under this part, the committee receives notice of the denial of a permit or authorization necessary for the project, review of the project shall be suspended and, if the denial becomes final, the application shall stand denied.

(r) If an area has both marshlands as defined in Code Section 12-5-282 and dynamic dune fields as defined in Code Section 12-5-232, it shall be subject to the jurisdiction of both such parts. In the event of a conflict between this part and Part 2 of this article, the commissioner shall determine which part shall apply so as to best protect the public interest. (Ga. L. 1970, p. 939, § 5; Code 1981, § 12-5-285; Code 1981, § 12-5-286, as redesignated by Ga. L. 1992, p. 2294, § 1; Ga. L. 2013, p. 874, § 6/HB 402.)

The 2013 amendment, effective July 1, 2013, designated the existing provisions of subsection (a) as paragraph (a)(1); in the third sentence of paragraph (a)(1), substituted "an additional permit" for "a permit", and added "and remains in serviceable condition" at the end; and added paragraph (a)(2).

Law reviews. — For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012).

12-5-287. Leasing of state owned marshland or water bottoms.

(a) The committee, acting for and on behalf of and in the name of the state, is further authorized and empowered to grant and convey to any eligible person a lease of state owned marshland or water bottoms, or a combination thereof, upon such terms and conditions as the committee deems advisable for the purpose of constructing, operating, and maintaining thereupon a marina or marinas or dock providing more than 500 linear feet of dock space, including the installing, maintaining, repairing, removing, and replacing of buildings, structures, piers, docks, floating docks, marine railways, dolphins, pilings, appurtenances thereto, and all facilities and improvements that shall be reasonably used for or in connection therewith, subject always to the initial and continuing compliance by the lessee with all applicable laws pertaining to the use of the leased property and subject always to the use and enjoyment of the public of any navigable waters upon or over the leased property. The applicant for any such lease shall inform the committee of the total linear footage of dock space proposed, but the final decision as to the total dock space available to moor boats shall be in the sound discretion of the committee.

(b) Upon application by any interested person for a lease pursuant to this Code section, the committee shall determine whether or not the applicant is an eligible person. The committee must also determine whether or not the applicant has sufficient lands properly to service the area to be leased. If the committee determines that the applicant is an eligible person and that sufficient lands exist to service the marina or dock, then the committee is authorized to grant and convey to the applicant a lease of the state owned marshland or water bottoms, or a combination thereof, described in the application without the necessity of public bid.

(c) The application for the lease shall be in writing and shall contain a request for a lease of the state owned property described therein. Such application shall include all of the information required for a permit under this part. The entire application must be in a form acceptable to the committee.

(d) Each lease granted under this Code section shall be upon such provisions, requirements, and conditions as the committee shall make and shall, except as provided in subsections (g) and (h) of this Code section, provide for a primary term of not more than ten years. Each lease, except as provided in subsections (g) and (h) of this Code section, shall require the payment of an annual rental fee which, as of May 5, 2009, shall be $1,000.00 per acre, which acreage shall consist of the covered area of dock structures and a ten-foot buffer surrounding such dock structures; and the committee shall in each calendar year thereafter adjust the amount of the annual rental fee per acre to reflect the effect of annual inflation or deflation for the immediately preceding calendar year in accordance with rules and regulations adopted by the board, which rules and regulations may use for this purpose the Consumer Price Index as reported by the Bureau of Labor Statistics of the United States Department of Labor or any other similar index established by the federal government, if the board determines that such federal index reflects the effect of inflation and deflation on the lessees. Except as provided in subsections (g) and (h) of this Code section, an initial lease shall be for the annual fee in effect and established by the committee at the time such lease is entered into. Such lease shall be adjusted annually thereafter as provided in this subsection. Each lease may provide for two renewal terms, each of which shall not be for a term of more than equal duration to the primary term. Rental fees shall be paid in one installment to the department not later than July 15 of each year. A penalty of 10 percent of the annual rental shall be assessed for late payment. Failure to pay rental by August 1 of the year due shall result in the cancellation of the lease.

(e) Each lease granted under this Code section shall protect the interest of owners of marshland and high land adjoining the high land of the lessee upon which the lessee's eligibility for lease was based to a right of access to the state owned marshland or water bottoms adjoining the state owned marshland or water bottoms leased to the applicant; provided, however, said owners of adjoining high land may assign their rights in writing in favor of the applicant and such written assignment may be used to determine the percentage of landward boundary required for eligibility to lease the state owned marshland and water bottoms described in the application.

(f) If the eligible person desires the ability to transfer or convey ownership interests in the leasehold to individuals purchasing or

leasing on a long-term basis the slips of the marina or marinas, each lease granted under this Code section shall require the formation of a condominium pursuant to Code Section 44-3-72.

(g) Upon application of any eligible person who either is the owner of a marina in existence on March 1, 1989, or holds a permit subsequently granted by the committee under this part on an application for a permit filed with the committee prior to March 1, 1989, the committee shall grant to that eligible person a lease of the state owned marshland or water bottoms upon which such marina is actually located for a term of 20 years beginning March 1, 1989, with a nominal rental of $1.00 per year; provided, however, that any extensions of the dock space or expansion of the area of state owned marshland or water bottoms actually used in conjunction with the marina shall be subject to the provisions of subsection (d) of this Code section; and provided, further, that any such application made on or after January 1, 1999, shall be subject to the provisions of subsection (d) of this Code section.

(h) Upon application of any eligible person who is either a nonprofit corporation, a nonprofit organization, or a public entity, the committee may grant a lease of state owned marshland or water bottoms for the construction and operation of a marina as a community or public dock. Each lease granted under this subsection shall be for a term of ten years from the date of its execution with a nominal rental of $1.00 for the entire term.

(i) The department shall make an annual report of its activities each calendar year to the General Assembly. The report shall include a summary of all applications received and leases granted, including length of terms, rentals, and locations. Copies of the annual report shall be provided to the director of the State Properties Commission, the chairperson of the House Natural Resources and Environment Committee, the chairperson of the House Committee on State Properties, the chairperson of the Senate Natural Resources and the Environment Committee, and the chairperson of the Senate Committee on State and Local Governmental Operations. The department shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the annual report in the manner which it deems to be most effective and efficient.

(j) The committee may place such terms, limitations, restrictions, and conditions in such leases as are deemed necessary to ensure that the utilization of the property is in the public interest. Leased areas shall be deemed to be areas where resources are managed by the state and lessee for the protection of wildlife and other natural resources.

(k) The committee may designate staff of the department to act on its behalf to evaluate, enforce, and execute leases issued under this part.

(l) A lease granted under this part shall be issued only to applicants who agree not to discriminate against any person on the basis of race, gender, color, national origin, religion, or disability. Discrimination by lessee may be punished by termination of the lease, by injunction, or by any other legal remedy available to the committee. (Code 1981, § 12-5-285.1, enacted by Ga. L. 1989, p. 574, § 3; Code 1981, § 12-5-287, as redesignated by Ga. L. 1992, p. 2294, § 1; Ga. L. 1995, p. 10, § 12; Ga. L. 1995, p. 462, § 1; Ga. L. 2005, p. 1036, § 6/SB 49; Ga. L. 2006, p. 72, § 12/SB 465; Ga. L. 2009, p. 778, § 1/HB 170; Ga. L. 2013, p. 141, § 12/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "House Committee on State Properties" for "House Committee on State Institutions and Property" in the third sentence of subsection (i).

ARTICLE 9

FLINT RIVER DROUGHT PROTECTION

12-5-541. Legislative intent.

(a) The General Assembly declares its intent and the public policy of this state that the state plans, regulates, and controls the withdrawal and the use of the waters of the state under the laws of Georgia to protect the public health, safety, and welfare; and the granting of any water withdrawal permit allows the permittee to use the water solely for the stated purposes described in the permit so long as such use is consistent with the public welfare of the state and upon such conditions as the state may prescribe. This declaration of intent shall also apply to all aspects of this article.

(b) The General Assembly finds that the use of water resources for the state for agricultural purposes is of vital importance to Georgia and southwest Georgia in particular; the protection of flows in the Flint River and its tributaries is necessary for a healthy riverine ecosystem and a healthy population of aquatic life; the use of water resources during drought conditions may interfere with public and private rights; the economic well-being of the State of Georgia is dependent on a strong and efficient agricultural industry; the wise use of water, the protection of stream flows, and the economic well-being of the state will be furthered by proper water allocation in periods of drought; and programs to augment stream flows or provide incentives to ensure that certain irrigated lands are temporarily not irrigated during severe droughts will promote the wise use of water resources, and the protection of stream flows for habitat critical for aquatic life, and the economic well-being of the state.

(c) The General Assembly declares its intent to fund the execution of the public policy set forth in subsection (b) of this Code section by and through the authority with appropriated funds for the purposes of this article, grants, and other sources of revenue. The General Assembly intends for the total maximum balance of the unexpended drought protection funds during any fiscal year not to exceed $30 million. In the event the total balance of unexpended drought protection funds at the end of a fiscal year is less than $5 million, it is the intent of the General Assembly that the total balance of unexpended drought protection funds be replenished to at least $10 million at the earliest possible time. Appropriation of funds for inclusion in and as part of the drought protection funds shall be deemed consistent with this declaration of legislative intent. (Code 1981, § 12-5-541, enacted by Ga. L. 2000, p. 458, § 1; Ga. L. 2014, p. 302, § 1/SB 213.)

The 2014 amendment, effective July 1, 2014, in subsection (b), substituted "protection of flows in the Flint River and its tributaries" for "protection of the Flint River flow" near the middle, substituted "stream flows" for "stream flow" in the middle, substituted "programs to augment stream flows or provide" for "a program providing" near the end, inserted "and", and inserted "for habitat critical for aquatic life" near the end.

12-5-542. Definitions.

As used in this article, except where otherwise specifically provided, the term:

(1) "Acceptable Flint River basin stream flows" means the quantity of stream flows at one or more specific locations on the Flint River or its tributaries which provides for aquatic life protection and other needs as established by the director, based on municipal, agricultural, industrial, and environmental needs. Such tributaries shall not include field drainage systems, wet weather ditches, or any other water body:

(A) In which the channel is located above the ground-water table year round;

(B) For which runoff from precipitation is the primary source of water flow; and

(C) For which ground water is not a source of water flow.

(2) "Affected areas" means those specific portions of the state lying within the Flint River basin where ground-water use from the Floridan aquifer can affect stream flow or where drainage into Spring Creek, Ichawaynochaway Creek, Kinchafoonee Creek, and Muckalee Creek occurs.

(2.1) "Augmentation" means the addition of ground water from one or more aquifers underlying the affected areas into a surface water

channel within the affected areas for the purpose of maintaining instream flows.

(3) "Authority" means the Georgia Environmental Finance Authority created by Chapter 23 of Title 50.

(4) "Board" means the Board of Natural Resources.

(5) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.

(6) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(7) "Drought conditions" means any condition which results in a stream flow that is lower than the acceptable Flint River basin stream flows.

(8) "Drought protection funds" means the funds held by the authority as provided in Code Section 12-5-545 for the accomplishment of the purposes of this article.

(9) "Flint River basin" means the area of land which drains into the Flint River or its tributaries.

(10) "Floridan aquifer" means those rocks and sediments described in United States Geological Survey Open-File Report 95-321 (1996) that are capable of yielding ground water to wells or discharging water into the Flint River or its tributaries.

(11) "Irrigated land" means farm land which is irrigated by ground water or surface water pursuant to a water withdrawal permit issued by the director pursuant to Code Section 12-5-31 or 12-5-96.

(11.1) "Irrigation efficiency" means the percentage of the total amount of water withdrawn from a source which is beneficially used to meet crop water requirements or for other agronomic practices in accordance with applicable best management practices.

(12) "Irrigation reduction auction" means the procedure established by subsection (b) of Code Section 12-5-546 pursuant to which permittees submit offers to cease irrigation of a specified number of acres in exchange for a certain sum of money.

(13) "Permittee" means a person holding a valid permit issued before December 1, 2000, pursuant to Code Section 12-5-31 or 12-5-96.

(14) "Stream flow" means the quantity of water passing a given location of the Flint River or its tributaries over a given time period expressed in cubic feet per second. (Code 1981, § 12-5-542, enacted by Ga. L. 2000, p. 458, § 1; Ga. L. 2010, p. 949, § 1/HB 244; Ga. L. 2014, p. 302, § 2/SB 213.)

The 2014 amendment, effective July 1, 2014, inserted "except where otherwise specifically provided," in the introductory paragraph of this Code section; inserted "or its tributaries" in the first sentence of paragraph (1) and in paragraph (14); in paragraph (1), substituted "Flint River basin stream flows'" for "Flint River stream flow'" and added the second sentence; added subparagraphs (1)(A) through (1)(C); substituted the present provisions of paragraph (2) for the former provisions, which read: "'Affected area' means that portion of the state lying within the Flint River basin and areas where ground-water use from the Floridan aquifer can affect the stream flow in the Flint River or its tributaries."; added paragraph (2.1); substituted "basin stream flows" for "stream flow" in paragraph (7); and added paragraph (11.1).

12-5-544. Powers of director.

In the performance of his or her duties, the director shall have and may exercise the power to:

(1) Exercise general supervision over the enforcement of this article and all rules, regulations, and orders promulgated pursuant to this article;

(2) Establish acceptable Flint River basin stream flows at one or more locations;

(3) Establish those geographical areas in or adjacent to the lower Flint River basin where the division's studies indicate that ground-water use from the Floridan aquifer may affect stream flow in the Flint River or its tributaries;

(4) Predict or declare when severe drought conditions exist or are expected to exist during a given year based on historical, mathematical, meteorological, or other scientific considerations which may be published by the director and which may be developed in consultation with the state climatologist, the state geologist, or other appropriate experts;

(5) Establish criteria necessary to prove actual previous irrigation of lands for which a permittee seeks payment from drought protection funds;

(6) Make investigations and inspections to ensure compliance with this article, the rules and regulations issued pursuant to this article, and any agreement or order that the division or director enters into or issues pursuant to this article;

(7) Institute, in the name of the division, proceedings of mandamus, injunction, or other proper administrative or civil proceedings to enforce this article, the rules and regulations promulgated under this article, or any agreements or orders entered into or issued under this article;

(8) Contract with the authority for implementing and carrying out, in whole or in part, the purposes of a drought abatement program for

the Flint River basin in accordance with this article and direct the authority to make expenditures from the drought protection funds in accordance with this article;

(9) Receive and collect all repayment penalties paid pursuant to this article and to transfer same to the authority for inclusion in the drought protection funds;

(9.1) Conduct and participate in studies related to management of the water resources in the Flint River basin;

(10) Encourage voluntary cooperation by persons and affected groups to achieve the purposes of this article; and

(11) Perform any and all acts and exercise all incidental powers necessary to carry out the purposes and requirements of this article. (Code 1981, § 12-5-544, enacted by Ga. L. 2000, p. 458, § 1; Ga. L. 2014, p. 302, § 3/SB 213.)

The 2014 amendment, effective July 1, 2014, inserted "basin" in the middle of paragraph (2) and added paragraph (9.1).

12-5-546. Prediction of drought; irrigation reduction auction; agreement.

(a) On or before March 1 of each year, the division may issue a prediction as to whether severe drought conditions are expected during the year. If the division predicts a severe drought during any particular year, it shall issue such prediction before March 1 of that year. Prediction of severe drought may be based on consideration of historical, mathematical, or meteorological information, including, but not limited to, stream flows, ground-water levels, and precipitation forecasts. Such prediction may also be based on scientific analyses, including, but not limited to, the Palmer Drought Severity Index administered by the National Oceanographic and Atmospheric Administration.

(b) If severe drought conditions are predicted or otherwise declared in accordance with subsection (a) of this Code section, the division may determine the total number of acres of irrigated land, serviced by irrigation systems located within one or more of the affected areas, that must not be irrigated that year in order to maintain the acceptable Flint River basin stream flows. Upon such determination, the division may conduct an irrigation reduction auction whereby a permittee of an irrigation system located within the affected areas is given an opportunity to enter into an agreement with the division, agreeing that in exchange for a certain sum of money per acre of irrigated land serviced by the irrigation system, the permittee will not irrigate those particular acres for the remainder of that calendar year. The authority shall pay

the sum so agreed upon when so directed by the director from the unexpended balance of the drought protection funds. In conducting the irrigation reduction auction, the division may establish a maximum dollar amount per acre to be expended from the drought protection funds for such purposes.

(c) An agreement entered into in accordance with subsection (b) of this Code section shall be upon such terms and conditions as the division may deem necessary. The agreement shall provide for payment of the agreed upon sum within 30 days of the date of execution of the agreement by the parties. Failure of a permittee to comply with all terms of the agreement for the duration thereof shall be deemed a violation of such agreement and this article and shall be subject to enforcement by the director as provided in this article.

(d) A permittee who enters into an agreement in accordance with subsection (b) of this Code section shall not irrigate during the period covered by the agreement on those acres that the owner has agreed not to irrigate. If the permittee irrigates said acres during the period covered by the agreement, such action shall be deemed a violation of the agreement and this article and shall be subject to a penalty as determined by the director as provided in this article.

(e) The expenditure of funds under this article as an incentive to permittees not to irrigate lands is deemed by the legislature as a valid use of state moneys to promote valid land use policies that result in the protection of the riverine environment by ensuring that such lands not be irrigated for specified periods of time. No expenditure of funds under this article shall be considered full or partial compensation for any losses, financial or otherwise, experienced due to nonirrigation; a lease or repurchase of any irrigation permit issued by the director; or an acknowledgment by the State of Georgia of a property right in any permit issued by the director. (Code 1981, § 12-5-546, enacted by Ga. L. 2000, p. 458, § 1; Ga. L. 2012, p. 775, § 12/HB 942; Ga. L. 2014, p. 302, § 4/SB 213.)

The 2014 amendment, effective July 1, 2014, in subsection (a), substituted "may issue" for "will issue" in the first sentence and added the second through fourth sentences; in subsection (b), in the first sentence, substituted "division may determine" for "division will determine" near the middle and substituted "Flint River basin stream flows" for "Flint River stream flow" near the end, and substituted "division may conduct" for "division shall conduct" near the beginning of the second sentence; and, in the middle of the second sentence of subsection (e), in the second sentence, inserted "full or partial compensation for any losses, financial or otherwise, experienced due to nonirrigation;" and substituted "director; or" for "director, nor shall it be considered".

12-5-546.1. Enhancement of programming and incentives; scheduling irrigation efficiencies; modifying water withdrawal permits; coordination of efforts.

(a) The Department of Agriculture and the State Soil and Water Conservation Commission shall coordinate with the division in examining current practices, programs, policies, rules, and regulations to identify opportunities to enhance programming and incentives that will:

(1) Support implementation of the agricultural water efficiency measures in water conservation or management plans prepared in accordance with Code Sections 12-5-31, 12-5-96, and 12-5-522;

(2) Support implementation of pilot projects demonstrating the efficacy of emerging innovative irrigation technologies where appropriate and affordable;

(3) Identify ways the State Soil and Water Conservation Commission's program for measuring agricultural uses of water as authorized under Code Section 12-5-105 can further enhance efforts to improve agricultural water use efficiency; and

(4) Encourage a scheduled program for the voluntary retirement of unused surface-water and ground-water farm use permits in accordance with Code Sections 12-5-31 and 12-5-105.

(b) The director may modify all active surface-water and ground-water withdrawal permits for farm use in the affected areas to require all irrigation systems applying water withdrawn pursuant to such permits to achieve irrigation efficiencies of 80 percent or greater by the year 2020. The schedule for achieving the irrigation efficiencies provided in this subsection shall be as follows:

(1) Irrigation systems applying water withdrawn pursuant to all active permits issued after 2005 shall achieve a minimum irrigation efficiency of 80 percent by January 1, 2016;

(2) Irrigation systems applying water withdrawn pursuant to all active permits issued from 1991 through 2005 shall achieve a minimum irrigation efficiency of 80 percent by January 1, 2018; and

(3) Irrigation systems applying water withdrawn pursuant to all active permits issued before 1991 shall achieve a minimum irrigation efficiency of 80 percent by January 1, 2020.

(c) Notwithstanding subsection (b) of this Code section, the director may modify specified active surface-water and ground-water withdrawal permits for farm use in the affected areas to require all mobile irrigation systems and solid-set irrigation sprinklers operating under

such permits to achieve irrigation efficiencies of 60 percent or greater by the year 2020. The schedule for achieving such efficiencies shall be as follows:

(1) Irrigation systems applying water withdrawn pursuant to all active permits issued after 2005 shall achieve a minimum irrigation efficiency of 60 percent by January 1, 2016;

(2) Irrigation systems applying water withdrawn pursuant to all active permits issued from 1991 through 2005 shall achieve a minimum irrigation efficiency of 60 percent by January 1, 2018; and

(3) Irrigation systems applying water withdrawn pursuant to all active permits issued before 1991 shall achieve a minimum irrigation efficiency of 60 percent by January 1, 2020.

(d) Notwithstanding the irrigation efficiency rates required in subsection (c) of this Code section or any other provision of this Code section to the contrary, the minimum irrigation efficiency rate for mobile irrigation systems and solid-set irrigation sprinklers applying water withdrawn pursuant to new permits shall be 60 percent.

(e) When issuing any permit application for a new surface-water or ground-water withdrawal for farm use in the affected areas, the division shall require that the irrigation system applying water withdrawn pursuant to any such permit has an irrigation efficiency of at least 80 percent.

(f) The division shall, in cooperation with other state and federal agencies, universities, the Georgia Water Planning and Policy Center, the Lower Flint-Ochlockonee Regional Water Council, and other appropriate entities, provide to the board for consideration for adoption in its rules requirements pertaining to methods an applicant may utilize to demonstrate that the required irrigation efficiency has been achieved. Requirements shall consider current technologies, best management practices, and the effects of soil type and topography, among other factors deemed necessary.

(g) The division shall coordinate with any federal or state agencies offering incentive programs that support the purposes of this article, to identify opportunities to refine and target relevant programs as practicable and to assist permittees with achieving irrigation efficiency requirements. (Code 1981, § 12-5-546.1, enacted by Ga. L. 2014, p. 302, § 5/SB 213.)

Effective date. — This Code section became effective July 1, 2014.

12-5-546.2. Notification in advance of any state funded augmentation projects.

(a) As used in this Code section, "permittee" means any person holding a valid permit issued pursuant to Code Section 12-5-31 which provides for the withdrawal of surface water from within the affected areas.

(b) The director shall notify specified permittees downstream of any state funded augmentation project, which shall be operated for the sole purpose of maintaining the minimum stream flows sufficient to protect habitat critical for vulnerable aquatic life within the affected areas. The director may notify specified downstream permittees that, during specified periods of the project's operation for the sole purpose of maintaining such minimum stream flows, the permittee shall let the flow provided by the augmentation project pass his or her point of withdrawal. When specifying those permittees subject to such notification, the director shall also establish, in accordance with the factors that may be considered under paragraph (e) of this Code section, those permittees that shall not be subject to the requirements of this Code section.

(c) Such notification shall be provided in accordance with rules promulgated by the board of natural resources, shall be based on the best available science, and shall, at a minimum, inform the permittees that the upstream project is delivering augmented flows for the sole purpose of maintaining the minimum stream flows sufficient to protect habitat critical for vulnerable aquatic life within the affected areas.

(d) The director's notification shall contain notice of opportunity for a hearing and shall be served by certified mail, return receipt requested, to the most recent address provided by the permittee. Any permittee to whom such notification is directed shall comply therewith immediately, but shall be afforded a hearing within five business days of the director's receipt of a petition filed by such permittee. Such hearing shall be before an administrative law judge of the Office of State Administrative Hearings and shall be conducted in accordance with subsection (c) of Code Section 12-2-2. Based upon findings adduced at such hearing, the notification shall be modified, reversed, or continued by the director.

(e) In preparing such notification, the director may consider:

(1) The best available modeling and monitoring data for relevant locations and stream reaches;

(2) The appropriate duration of protection of augmented flows;

(3) The distance downstream for which protection of augmented flows is appropriate;

(4) The degree to which protection of augmented flows will assist in mitigating the effects of droughts, provide ecological or other environmental benefits, and ensure sustainable, long-term access to water resources for existing and future water users; and

(5) Any other data or information the director deems relevant.

(f) Nothing in this Code section shall provide authority for the interbasin transfer of any water. (Code 1981, § 12-5-546.2, enacted by Ga. L. 2014, p. 302, § 5/SB 213.)

Effective date. — This Code section became effective July 1, 2014.

12-5-549. Compliance; violations.

(a) Except as may otherwise be provided in this article, whenever the director has reason to believe that a violation of any provision of this article or any rule or regulation adopted pursuant to this article has occurred, he or she shall attempt to obtain compliance therewith by conference, conciliation, or persuasion, if the making of such an attempt is appropriate under the circumstances. If he or she fails to obtain compliance in this manner, the director may order the violator to take whatever corrective action the director deems necessary in order to obtain such compliance within a period of time to be prescribed in such order.

(b) Except as may otherwise be provided in this article, any order issued by the director under this article shall become final unless the person or persons named therein file with the director a written request for a hearing within 30 days after such order or permit is served on such person or persons.

(c) Except as may otherwise be provided in this article, hearings on contested matters and judicial review of final orders and other enforcement actions under this article shall be provided and conducted in accordance with subsection (c) of Code Section 12-2-2.

(d) The director may file in the superior court of the county wherein the person under order resides, or if the person is a corporation, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred or in which jurisdiction is appropriate, a certified copy of a final order of the director unappealed from or a final order of the director affirmed upon appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though the judgment had been rendered in an action duly heard and determined by such court.

(e) For purposes of this Code section, a violation of an agreement entered into in accordance with Code Section 12-5-546 or an order issued by the director in accordance with Code Section 12-5-547 shall be prima facie established upon a showing that:

(1) During the effective period of the agreement or order, the irrigation system was observed in person or via remote sensing or otherwise established by representatives of the division or others to have been operating and disbursing water; or

(2) During the effective period of the agreement or order, a seal, lock, or other device placed by the division on the system to prevent operation of the system has been broken or otherwise tampered with. (Code 1981, § 12-5-549, enacted by Ga. L. 2000, p. 458, § 1; Ga. L. 2014, p. 302, § 6/SB 213.)

The 2014 amendment, effective July 1, 2014, substituted "this article" for "Code Section 12-5-547" near the beginning of the first sentence of subsections (a), (b), and (c).

CHAPTER 6

FOREST RESOURCES AND OTHER PLANT LIFE

Article 1

Forest Resources

Part 1

State Forestry Commission

Part 1A

Timber Harvesting and Removal Requirements

Article 2

Ginseng Protection

ARTICLE 1

FOREST RESOURCES

PART 1

STATE FORESTRY COMMISSION

12-6-20. Investigation and enforcement of forestry laws; powers of forestry investigators.

(a) As used in this Code section, the term "forestry laws" means laws relating to forestry or timber resources and the protection, security, conservation, or sale of such resources.

(a.1) The director, with the approval of the commission, may appoint investigators to enforce the forestry laws of this state.

(b) The investigators so appointed and any fire-fighting crews under their direction may enter upon any land for the purpose of preventing and suppressing fires and enforcing the fire and other forestry laws of this state.

(c) Investigators who have been so appointed shall be certified by the Georgia Peace Officer Standards and Training Council after having successfully completed the course of training required by Chapter 8 of Title 35, the "Georgia Peace Officer Standards and Training Act," and thereafter shall be authorized and empowered to:

(1) Make summary arrests for violations of the fire and other forestry laws of this state; and, in case of such arrests, the investigator shall as soon as possible deliver the arrested person or persons to the custody of the sheriff of the county wherein the offense was committed;

(2) Arrest persons accused of violating any law which such investigators are empowered to enforce by the issuance of a citation, provided that the offense is committed in the presence of the investigator or information concerning the offense constituting a basis for arrest was received by the arresting investigator from a law enforcement officer, commission firefighter, or forester who observed the offense being committed. The arresting investigator may issue to the accused person a citation which shall enumerate the specific charges against such person and the date upon which such person is to appear and answer such charges. Whenever an arrest is made by the arresting investigator on the basis of information received from another law enforcement officer, commission firefighter, or forester who observed the offense being committed, such citation shall list the name of each officer, firefighter, or forester and each officer, fire-

fighter, or forester shall be present when the charges against the offender are heard;

(3) Execute search warrants and arrest warrants for criminal violations relating to the forestry laws of this state and to arrest, upon probable cause and without warrant, any person the investigator observes violating any criminal law of this state while carrying out his or her duties, provided that such person shall immediately be delivered to the sheriff of the county where the violation occurred; and

(4) Carry weapons in order to execute their enforcement authority under this Code section.

(d)(1) Upon initiating any investigation regarding the potential theft or conversion of timber, the investigator shall promptly notify the sheriff or other law enforcement agency exercising jurisdiction within the county or municipality in which the investigator is conducting such investigation. No investigator shall request any other state law enforcement agency to render assistance in any investigation relating to the theft or conversion of timber without the consent of the sheriff or other law enforcement agency exercising jurisdiction within the county or municipality in which the investigation is conducted.

(2) The director may, and in the case of a request by the Governor shall, authorize and direct investigators to cooperate with and render assistance to any law enforcement agency of this state or of any political subdivision of this state in any criminal case, in the prevention or detection of violations of any law, or in the apprehension or arrest of any person who violates the criminal laws of this state, any other state, or the United States, upon a request by the sheriff or chief law enforcement officer of any political subdivision of this state or by the Governor.

(3) Nothing in this Code section shall repeal, supersede, alter, affect, or otherwise usurp the power of any other law enforcement officer of this state or of any political subdivision of this state.

(e) If any person charged by citation as provided in paragraph (2) of subsection (c) of this Code section shall fail to appear in court as specified in the citation, the judge having jurisdiction of the offense may issue a warrant ordering the apprehension of such person and commanding that he or she be brought before the court to answer the charge contained within such citation and the charge of his or her failure to appear as required. Such person shall then be allowed to make a reasonable bond to appear on a given date before the court. (Ga. L. 1925, p. 199, § 8; Ga. L. 1931, p. 7, § 21; Code 1933, § 43-208; Ga. L. 1937, p. 264, § 9; Ga. L. 1952, p. 211, § 1; Ga. L. 1955, p. 309, § 30; Ga. L. 2008, p. 444, § 1/SB 400; Ga. L. 2009, p. 8, § 12/SB 46; Ga. L. 2014, p. 695, § 2/HB 790.)

The 2014 amendment, effective July 1, 2014, added subsection (a); redesignated former subsection (a) as present subsection (a.1); deleted "and regulations" following "forestry laws" in subsections (a.1), (b), and in paragraph (c)(1); in the introductory paragraph of subsection (c), substituted "shall be certified" for "and who have been certified" near the beginning, substituted "after having" for "as having" near the middle, and inserted "and thereafter" near the end; in paragraph (c)(2), in the first sentence, deleted "or regulation" following "any law" near the beginning, inserted ", commission firefighter, or forester" near the end of the first sentence and in the middle of the third sentence, in the third sentence, inserted "firefighter, or forester" and inserted ", firefighter, or forester" near the end, and deleted "and" at the end; added paragraph (c)(3); redesignated former paragraph (c)(3) as present paragraph (c)(4), and, in paragraph (c)(4), substituted the present provisions for the former provisions, which read: "Carry weapons in order to enforce the forestry laws and regulations of this state."; and substituted the present provisions of subsection (d) for the former provisions, which read: "The provisions of paragraphs (1) and (2) of subsection (c) of this Code section notwithstanding, no arrest shall be made of any person for an offense described in subsection (e) of Code Section 12-6-90 unless on two previous occasions such person was issued warnings by a forestry investigator, other law enforcement officer, or State Forestry Commission firefighter for such an offense."

Part 1A

Timber Harvesting and Removal Requirements

12-6-23. Scale load ticket required for wood removal; form; exceptions.

(a) Any person, company, corporation, or others purchasing timber from lands in Georgia shall, within 20 days of removal of such timber, furnish the seller of timber a scale ticket for each and every load of wood removed, when such load is sold by weight, cord, or measure of board feet. A scale ticket shall include information clearly understandable to the seller as follows:

(1) Ticket number;

(2) Name and location of the person or company and its facility where the load of wood is received and weighed or measured;

(3) Date wood was received at such facility;

(4) Tract name;

(5) County and state of origin;

(6) Dealer name (if any);

(7) Producer or logging company name;

(8) Species of wood;

(9) Weight or scale information. If the load is measured by weight, the gross, tare, and net weights shall be shown. If the load is measured by scale, the total volume shall be shown;

(10) Weight, scale, or amount of wood deducted and the deduction classification (cull, undersize, metal, knots, etc.); and

(11) Name of the person receiving, weighing, or scaling the wood.

(b) Subsection (a) of this Code section shall not apply to the following:

(1) The sale of wood for firewood only;

(2) Any landowner harvesting and processing his own timber; and

(3) Bulk or lump sum sales wherein the landowner and the purchaser agree on a total price for all of said timber purchased.

(c) Any person, company, or corporation which violates any provision of subsection (a) of this Code section shall be guilty of a misdemeanor. (Code 1981, § 12-6-23, enacted by Ga. L. 1985, p. 1077, § 1; Ga. L. 1986, p. 402, § 2; Ga. L. 2002, p. 1126, § 1; Ga. L. 2014, p. 695, § 3/HB 790.)

The 2014 amendment, effective July 1, 2014, substituted the present provisions of subsection (a) for the former provisions, which read: "Any person, company, corporation, or others purchasing trees or timber directly from the landowner from lands in Georgia shall be required to furnish the owner of said lands a wood load ticket for each and every load of wood removed from said property, when such load is sold by weight, cord, or measure of board feet. A wood load ticket shall include, but not be limited to, information clearly understandable to the landowner as follows:"; and substituted "such" for "said" in paragraph (a)(3).

ARTICLE 2

GINSENG PROTECTION

12-6-152. Prohibited acts regarding harvesting ginseng.

It shall be unlawful for any person to harvest ginseng in this state except from September 1 through December 31 and with the written permission of the owner of the property on which the ginseng is located. It shall also be unlawful for any person to harvest ginseng that has fewer than three prongs. Further, it shall also be unlawful for any person to fail to plant, immediately after harvest, the ripe berries of the harvested ginseng at the same location at which such ginseng was harvested. (Ga. L. 1979, p. 919, § 3; Ga. L. 1996, p. 327, § 1; Ga. L. 2013, p. 564, § 1/SB 81.)

The 2013 amendment, effective May 6, 2013, substituted "September 1" for "August 15" in the first sentence of this Code section.

CHAPTER 7

CONTROL OF SOIL EROSION AND SEDIMENTATION

12-7-1. Short title.

JUDICIAL DECISIONS

Organization lacked standing to appeal consent order. — Trial court erred by concluding that an organization had standing to appeal a consent order between a property owner and the Director of the Environmental Protection Division (EPD) with regard to soil erosion as it lacked standing to appeal based upon its inability to demonstrate redressability as it failed to identify a procedural requirement the EPD violated, and the consent order did not fall within the categories of orders that required provision of notice and opportunity for comment. Ctr. for a Sustainable Coast, Inc. v. Turner, 324 Ga. App. 762, 751 S.E.2d 555 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Post development regulatory framework not mandated. — Erosion and Sedimentation Act, O.C.G.A. § 12-7-1 et seq., does not mandate a post-development regulatory framework and it cannot serve as a basis for local governments to assert regulatory authority over the state in a post-development capacity. 2013 Op. Att'y Gen. No. 13-3.

12-7-2. Legislative findings; policy of state and intent of chapter.

JUDICIAL DECISIONS

Exclusion of evidence for violations. — Trial court did not err in denying the defendant's motion in limine to exclude evidence relating to the defendant's violations of the Georgia Water Quality Control Act, O.C.G.A. § 12-5-20 et seq., and the Sedimentation Control Act, O.C.G.A. §§ 12-7-2 and 12-7-6(a), because the evidence was relevant to the plaintiffs' negligence per se claims. Pulte Home Corp. v. Simerly, 322 Ga. App. 699, 746 S.E.2d 173 (2013).

12-7-3. Definitions.

JUDICIAL DECISIONS

Organization lacked standing to appeal consent order. — Trial court erred by concluding that an organization had standing to appeal a consent order between a property owner and the Director of the Environmental Protection Division (EPD) with regard to soil erosion as it lacked standing to appeal based upon its inability to demonstrate redressability as it failed to identify a procedural requirement the EPD violated, and the consent order did not fall within the categories of orders that required provision of notice and opportunity for comment. Ctr. for a Sustainable Coast, Inc. v. Turner, 324 Ga. App. 762, 751 S.E.2d 555 (2013).

12-7-6. Best management practices; minimum requirements for rules, regulations, ordinances, or resolutions.

JUDICIAL DECISIONS

Exclusion of evidence for violations. — Trial court did not err in denying defendant's motion in limine to exclude evidence relating to the defendant's violations of the Georgia Water Quality Control Act, O.C.G.A. § 12-5-20 et seq., and the Sedimentation Control Act, O.C.G.A. §§ 12-7-2 and 12-7-6(a), because the evidence was relevant to the plaintiffs' negligence per se claims. Pulte Home Corp. v. Simerly, 322 Ga. App. 699, 746 S.E.2d 173 (2013).

Organization lacked standing to appeal consent order. — Trial court erred by concluding that an organization had standing to appeal a consent order between a property owner and the Director of the Environmental Protection Division (EPD) with regard to soil erosion as it lacked standing to appeal based upon its inability to demonstrate redressability as it failed to identify a procedural requirement the EPD violated, and the consent order did not fall within the categories of orders that required provision of notice and opportunity for comment. Ctr. for a Sustainable Coast, Inc. v. Turner, 324 Ga. App. 762, 751 S.E.2d 555 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Stormwater handling. — State is not required to seek and obtain permits for post-development stormwater handling and that a local government, even if certified as a local issuing authority, may not condition the issuance of a land disturbance permit to the state, or the state's contractors, on compliance with any requirements, including local post-development stormwater regulations, other than the requirements set forth in O.C.G.A. § 12-7-6(b) and the state general permit. Further, a local government may not require the state to enter into a stormwater facility maintenance agreement, either as a condition for issuance of a permit or for connecting to the local storm sewer. A local government may, however, require payment of a local stormwater management fee from the state before allowing a state construction project to connect to the local sewer system. 2013 Op. Att'y Gen. No. 13-3.

12-7-12. Orders directed to violators; stop work order procedures.

JUDICIAL DECISIONS

Organization lacked standing to appeal consent order. — Trial court erred by concluding that an organization had standing to appeal a consent order between a property owner and the Director of the Environmental Protection Division (EPD) with regard to soil erosion as it lacked standing to appeal based upon its inability to demonstrate redressability as it failed to identify a procedural requirement the EPD violated, and the consent order did not fall within the categories of orders that required provision of notice and opportunity for comment. Ctr. for a Sustainable Coast, Inc. v. Turner, 324 Ga. App. 762, 751 S.E.2d 555 (2013).

12-7-16. Hearings and review.

JUDICIAL DECISIONS

Organization lacked standing to appeal consent order. — Trial court erred by concluding that an organization had standing to appeal a consent order between a property owner and the Director of the Environmental Protection Division (EPD) with regard to soil erosion as it lacked standing to appeal based upon its inability to demonstrate redressability as it failed to identify a procedural requirement the EPD violated, and the consent order did not fall within the categories of orders that required provision of notice and opportunity for comment. Ctr. for a Sustainable Coast, Inc. v. Turner, 324 Ga. App. 762, 751 S.E.2d 555 (2013).

CHAPTER 8

WASTE MANAGEMENT

Article 2

Solid Waste Management

Part 1

General Provisions

Sec.

Article 3

Hazardous Waste

Part 2

Hazardous Site Response

Sec.

Part 3

Georgia Voluntary Remediation Program

Sec.

Article 9

Georgia Hazardous Site Reuse and Redevelopment

Sec.

ARTICLE 2

SOLID WASTE MANAGEMENT

PART 1

GENERAL PROVISIONS

12-8-20. Short title.

JUDICIAL DECISIONS

Prior consent order did not amount to criminal punishment to which double jeopardy prohibitions applied. — Trial court properly denied a solid waste facility operator's double jeopardy plea in bar of prosecution because even though the parties stipulated that the consent order and the criminal action alleged the same nuisance conduct and each proceeding had the same goals of restraint, deterrence, and abatement, the criminal action was not barred by the sanctions imposed in the consent order since the consent order did not amount to criminal punishment to which double jeopardy prohibitions applied. Wilbros, LLC v. State, 294 Ga. 514, 755 S.E.2d 145 (2014).

12-8-22. Definitions.

As used in this article, the term:

(1) "Affected county" means, in addition to the county in which a facility is or is proposed to be located, each county contiguous to the host county and each county and municipality within a county that has a written agreement with the facility to dispose of solid waste.

(1.1) "Biomedical waste" means pathological waste, biological waste cultures and stocks of infectious agents and associated biologicals, contaminated animal carcasses (body parts, their bedding, and other wastes from such animals), sharps, chemotherapy waste, discarded medical equipment and parts, not including expendable supplies and materials which have not been decontaminated, as further defined in Rule 391-3-4-.15 of the board as such rule existed on January 1, 2006, and other such waste materials.

(2) "Board" means the Board of Natural Resources of the State of Georgia.

(3) "Certificate" means a document issued by a college or university of the University System of Georgia or other organization approved by the director stating that the operator has met the requirements of the board for the specified operator classification of the certification program.

(4) "Closure" means a procedure approved by the division which provides for the cessation of waste receipt at a solid waste disposal site and for the securing of the site in preparation for postclosure.

(4.1) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

(5) "Composting" means the controlled biological decomposition of organic matter into a stable, odor-free humus.

(5.1) "Construction or demolition waste" means waste building materials and rubble resulting from construction, remodeling, repair, or demolition operations on pavements, houses, commercial buildings, and other structures. Such waste includes but is not limited to waste containing asbestos, wood, bricks, metal, concrete, wallboard, paper, cardboard, and other nonputrescible wastes associated with construction and demolition activities which have a low potential for ground-water contamination. Inert waste landfill materials approved by the board for disposal in landfills permitted by rule and regulation are also included in this definition if disposed in a construction or demolition waste landfill.

(6) "Contaminant" means any physical, chemical, biological, or radiological substance or matter.

(7) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.

(8) "Disposal facility" means any facility or location where the final deposition of solid waste occurs and includes but is not limited to landfilling and solid waste thermal treatment technology facilities.

(9) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(10) "Financial responsibility mechanism" means a mechanism designed to demonstrate that sufficient funds will be available to meet specific environmental protection needs of solid waste handling facilities. Available financial responsibility mechanisms include but are not limited to insurance, trust funds, surety bonds, letters of credit, personal bonds, certificates of deposit, financial tests, and corporate guarantees as defined in 40 C.F.R. Part 264 Subpart H — Financial Requirements.

(11) "Generator" means any person in Georgia or in any other state who creates solid waste.

(12) "Hazardous constituent" means any substance listed as a hazardous constituent in regulations promulgated pursuant to the federal act by the administrator of the United States Environmental Protection Agency which are in force and effect on February 1, 2004, codified as Appendix VIII to 40 C.F.R. Part 261 — Identification and Listing of Hazardous Waste.

(12.1) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes or operations that is not a hazardous waste regulated under Part 1 of Article 3 of this chapter, the "Georgia Hazardous Waste Management Act." Such waste includes, but is not limited to, waste resulting from the following manufacturing processes: Electric power generation; fertilizer and agricultural chemicals; food and related products and by-products; inorganic chemicals; iron and steel products; leather and leather products; nonferrous metal and foundry products; organic chemicals; plastics and resins; pulp and paper; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textiles; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

(13) "Label" means a code label described in paragraphs (3) and (4) of subsection (b) of Code Section 12-8-34.

(14) "Landfill" means an area of land on which or an excavation in which solid waste is placed for permanent disposal and which is not a land application unit, surface impoundment, injection well, or compost pile.

(15) "Leachate collection system" means a system at a landfill for collection of the leachate which may percolate through the waste and into the soils surrounding the landfill.

(15.1) "Litter" has the meaning provided by Code Section 16-7-42.

(16) "Manifest" means a form or document used for identifying the quantity and composition and the origin, routing, and destination of special solid waste during its transportation from the point of generation, through any intermediate points, to the point of disposal, treatment, or storage.

(17) "Materials recovery facility" means a solid waste handling facility that provides for the extraction from solid waste of recoverable materials, materials suitable for use as a fuel or soil amendment, or any combination of such materials.

(17.1) "Multijurisdictional solid waste management plan" means a comprehensive solid waste plan adopted pursuant to Code Section 12-8-31.1 covering two or more jurisdictions.

(18) "Municipal solid waste" means any solid waste derived from households, including garbage, trash, and sanitary waste in septic tanks and means solid waste from single-family and multifamily residences, hotels and motels, bunkhouses, campgrounds, picnic grounds, and day use recreation areas. The term includes yard trimmings, construction or demolition waste, and commercial solid

waste but does not include solid waste from mining, agricultural, or silvicultural operations or industrial processes or operations.

(19) "Municipal solid waste disposal facility" means any facility or location where the final deposition of any amount of municipal solid waste occurs, whether or not mixed with or including commercial or industrial solid waste, and includes, but is not limited to, municipal solid waste landfills and municipal solid waste thermal treatment technology facilities.

(20) "Municipal solid waste landfill" means a disposal facility where any amount of municipal solid waste, whether or not mixed with or including commercial waste, industrial waste, nonhazardous sludges, or small quantity generator hazardous waste, is disposed of by means of placing an approved cover thereon.

(21) "Operator" means the person stationed on the site who is in responsible charge of and has direct supervision of daily field operations of a municipal solid waste disposal facility to ensure that the facility operates in compliance with the permit.

(22) "Person" means the State of Georgia or any other state or any agency or institution thereof and any municipality, county, political subdivision, public or private corporation, solid waste authority, special district empowered to engage in solid waste management activities, individual, partnership, association, or other entity in Georgia or any other state. This term also includes any officer or governing or managing body of any municipality, political subdivision, solid waste authority, special district empowered to engage in solid waste management activities, or public or private corporation in Georgia or any other state. This term also includes employees, departments, and agencies of the federal government.

(23) "Postclosure" means a procedure approved by the division to provide for long-term financial assurance, monitoring, and maintenance of a solid waste disposal site to protect human health and the environment.

(24) "Private industry solid waste disposal facility" means a disposal facility which is operated exclusively by and for a private solid waste generator for the purpose of accepting solid waste generated exclusively by said private solid waste generator.

(25) "Recovered materials" means those materials which have known use, reuse, or recycling potential; can be feasibly used, reused, or recycled; and have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing.

(26) "Recovered materials processing facility" means a facility engaged solely in the storage, processing, and resale or reuse of

recovered materials. Such term shall not include a solid waste handling facility; provided, however, any solid waste generated by such facility shall be subject to all applicable laws and regulations relating to such solid waste.

(27) "Recycling" means any process by which materials which would otherwise become solid waste are collected, separated, or processed and reused or returned to use in the form of raw materials or products.

(27.1) "Regional landfill or regional solid waste disposal facility" means a facility owned by a county, municipality, authority, or special district empowered to engage in solid waste management activities, or any combination thereof, which serves two or more or any combination of counties, municipalities, or special solid waste districts.

(27.2) "Regional solid waste management plan" means a comprehensive solid waste plan adopted pursuant to Code Section 12-8-31.1 covering two or more counties and may include one or more municipal corporations within those counties.

(28) "Retreadable casing" means a scrap tire suitable for retreading.

(29) "Rigid plastic bottle" means any rigid plastic container with a neck that is smaller than the container body with a capacity of 16 ounces or more and less than five gallons.

(30) "Rigid plastic container" means any formed or molded part comprised predominantly of plastic resin, having a relatively inflexible finite shape or form, and intended primarily as a single-service container with a capacity of eight ounces or more and less than five gallons.

(31) "Scrap tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect.

(32) Reserved.

(33) "Solid waste" means any garbage or refuse; sludge from a waste-water treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material including solid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and community activities, but does not include recovered materials; solid or dissolved materials in domestic sewage; solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. Section 1342; or source, special nuclear, or by-product material as defined by the federal Atomic Energy Act of 1954, as amended (68 Stat. 923).

(34) "Solid waste handling" means the storage, collection, transportation, treatment, utilization, processing, or disposal of solid waste or any combination of such activities.

(35) "Solid waste handling facility" means any facility the primary purpose of which is the storage, collection, transportation, treatment, utilization, processing, or disposal, or any combination thereof, of solid waste.

(36) "Solid waste thermal treatment technology" means any solid waste handling facility the purpose of which is to reduce the amount of solid waste to be disposed of through a process of combustion, with or without the process of waste to energy.

(37) "Special solid waste" means any solid waste not otherwise regulated under Part 1 of Article 3 of this chapter, known as the "Georgia Hazardous Waste Management Act," and regulations promulgated under such part originating or produced from or by a source or generator not subject to regulation under Code Section 12-8-24.

(38) "Tire" means a continuous solid or pneumatic rubber covering designed for encircling the wheel of a motor vehicle and which is neither attached to the motor vehicle nor a part of the motor vehicle as original equipment.

(38.1) "Tire carrier" means any person engaged in collecting or transporting tires, other than new tires.

(39) "Tire retailer" means any person, other than a used motor vehicle parts dealer licensed in accordance with Chapter 47 of Title 43, engaged in the business of selling new replacement tires or used tires.

(40) "Tire retreader" means any person actively engaged in the business of retreading scrap tires by scarifying the surface to remove the old surface tread and attaching a new tread to make a usable tire.

(40.1) "Used tire" means a tire which has a minimum of 2/32 inch of road tread and which is still suitable for its original purpose but is no longer new. A tire retailer shall inventory and market used tires in substantially the same fashion as a new tire and be able to provide satisfactory evidence to the division that a market for the tire exists and the tire is in fact being marketed as a used tire. A used tire shall not be considered solid waste.

(41) "Waste to energy facility" means a solid waste handling facility that provides for the extraction and utilization of energy from municipal solid waste through a process of combustion.

(42) "Yard trimmings" means leaves, brush, grass clippings, shrub and tree prunings, discarded Christmas trees, nursery and green-

house vegetative residuals, and vegetative matter resulting from landscaping development and maintenance other than mining, agricultural, and silvicultural operations. (Code 1981, § 12-8-22, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 2234, § 2; Ga. L. 1992, p. 3259, § 2; Ga. L. 1992, p. 3276, § 1; Ga. L. 1993, p. 91, § 12; Ga. L. 1993, p. 399, §§ 3, 4; Ga. L. 2005, p. 1247, §§ 3-6/SB 122; Ga. L. 2006, p. 275, § 3-1/HB 1320; Ga. L. 2012, p. 775, § 12/HB 942; Ga. L. 2013, p. 274, § 1/HB 226.)

The 2013 amendment, effective April 30, 2013, substituted "Reserved." for the former provisions of paragraph (32), which read: "'Scrap tire carrier' means any person engaged in picking up or transporting scrap tires for the purpose of removal to a scrap tire processor, end user, or disposal facility."; added paragraph (38.1); in paragraph (39), inserted ", other than a used motor vehicle parts dealer licensed in accordance with Chapter 47 of Title 43", and added "or used tires" at the end; and added paragraph (40.1).

JUDICIAL DECISIONS

Recovered materials and not solid waste. — Because defendant carpet manufacturer's "selvage" could be processed into other items, was shipped for recycling, and shipments stopped when the manufacturer learned no recycling was taking place, the selvage constituted "recovered materials," not "solid waste" under O.C.G.A. § 12-8-22(25), (33), and the manufacturer was not liable for alleged violations of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; Georgia's Hazardous Waste Management Act, O.C.G.A. Ch. 8, T. 12; and Comprehensive Solid Waste Management Act, O.C.G.A. § 12-8-20. Premier Assocs. v. EXL Polymers, Inc., No. 12-10325, 2013 U.S. App. LEXIS 2474 (11th Cir. Feb. 5, 2013) (Unpublished).

12-8-23. Powers and duties of board.

In the performance of its duties the board shall have and may exercise the power to:

(1) Adopt, promulgate, modify, amend, and repeal rules and regulations to implement and enforce the provisions of this part as the board may deem necessary to provide for the control and management of solid waste to protect the environment and the health of humans. Such rules and regulations may be applicable to the state as a whole or may vary from area to area or may vary by waste characteristics, as may be appropriate to facilitate the accomplishment of the provisions, purposes, and policies of this part. The rules and regulations may include, but shall not be limited to, the following:

(A) Rules and regulations governing and controlling solid waste handling, including measures to ensure that solid waste management practices are regulated, governed, and controlled in the public interest;

(B) Rules and regulations prescribing the procedure to be followed in applying for permits and requiring the submission of such plans, specifications, verifications, and other pertinent information deemed relevant in connection with the issuance of such permits;

(C) Rules and regulations concerning the establishment of permits by rule;

(D) Rules and regulations establishing the use of a manifest during the generation and handling of special solid waste;

(E) Rules and regulations governing and controlling the handling of special solid waste and biomedical waste;

(F) Rules and regulations establishing criteria and a system of priorities for the distribution of any state funds as may be made available through a grant-in-aid program to assist financially local governmental agencies or authorities in the planning, implementing, maintaining, or operating of solid waste handling systems which are consistent with local and regional solid waste management plans;

(G) Rules and regulations establishing procedures and requirements for the postclosure care of all solid waste disposal facilities, including but not limited to corrective action of releases, ground-water monitoring, and maintenance of final cover;

(H) Rules and regulations establishing the criteria for approval, time periods for coverage, and other terms and conditions for the demonstration of financial responsibility required by this part and for the implementation of financial responsibility instruments;

(I) Rules and regulations establishing qualifications for municipal solid waste disposal facility operators and certification of such operators through colleges or universities of the University System of Georgia or other organizations as may be determined acceptable by the board;

(J) Rules and regulations regulating the generation, collection, processing, and disposal of scrap tires and the collection, inventory, and marketing of used tires and governing the investigation and cleanup of sites where scrap tires have been disposed regardless of the date when such disposal occurred; and

(K) Rules and regulations further defining what shall or shall not constitute "recovered materials"; and

(2) Take all necessary steps to ensure the effective enforcement of this part. (Code 1981, § 12-8-23, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 3259, § 3; Ga. L. 1992, p. 3276, § 2; Ga. L. 2013, p. 274, § 2/HB 226.)

The 2013 amendment, effective April 30, 2013, inserted "and the collection, inventory, and marketing of used tires" near the middle of subparagraph (1)(J).

12-8-24. Permits for solid waste or special solid waste handling, disposal, or thermal treatment technology facility; inspection of solid waste generators.

(a) No person shall engage in solid waste or special solid waste handling in Georgia or construct or operate a solid waste handling facility in Georgia, except those individuals exempted from this part under Code Section 12-8-30.10, without first obtaining a permit from the director authorizing such activity.

(b)(1) No permit for a biomedical waste thermal treatment technology facility shall be issued by the director unless the applicant for such facility demonstrates to the director that a need exists for the facility for waste generated in Georgia by showing that there is not presently in existence within the state sufficient disposal facilities for biomedical waste being generated or expected to be generated within the state. For purposes of this part, "biomedical waste thermal treatment technology facility" means any facility that exists for the purpose of reducing the amount of biomedical waste disposed of through a process of combustion, with or without the process of converting such waste to energy.

(2) Paragraph (1) of this subsection shall not apply to any biomedical waste thermal treatment technology facility which is operated exclusively by a private biomedical waste generator on property owned by the private biomedical waste generator for the purpose of accepting biomedical waste exclusively from the private biomedical waste generator so long as the operation of the biomedical waste thermal treatment technology facility does not adversely affect the public health or the environment. After commencement of operation by a private biomedical waste generator of a biomedical waste thermal treatment technology facility which is permitted by but not included in a local or regional solid waste management plan, amendment of the local or regional solid waste management plan shall be required for any biomedical waste which is no longer to be disposed of by the private biomedical waste generator in its own biomedical waste thermal treatment technology facility prior to any substantial reduction in the amount of biomedical waste produced by the private biomedical waste generator and accepted by its own biomedical waste thermal treatment technology facility or the closure of such facility.

(c) On or after March 30, 1990, any permit for the transportation of municipal solid waste from a jurisdiction generating solid waste to a municipal solid waste disposal facility located in another county shall be conditioned upon the jurisdiction generating solid waste developing

and being actively involved in, by July 1, 1992, a strategy for meeting the state-wide goal of waste reduction by July 1, 1996.

(d) If the director determines that such activity will result in any violation of this part or any rule or regulation promulgated pursuant to this part, he shall deny the permit; otherwise, he shall issue the permit, specifying on the permit the conditions under which such activity shall be conducted; provided, however, that a public hearing shall be held by the governing authority of the county or municipality in which the municipal solid waste or special solid waste handling shall occur not less than two weeks prior to the issuance of any permit under this Code section and notice of such hearing shall be posted at the proposed site and advertised in a newspaper of general circulation serving the county or counties in which the proposed activity will be conducted at least 30 days prior to such hearing.

(e)(1)(A) Reserved.

(B) The director may suspend, modify, or revoke any permit issued pursuant to this Code section if the holder of the permit is found to be in violation of any of the permit conditions or any order of the director or fails to perform solid waste handling in accordance with this part or rules promulgated under this part.

(C)(i) The director may modify any permit issued pursuant to this Code section in accordance with rules promulgated by the board. All modifications of existing permits shall be classified by the board as either major or minor modifications.

(ii) All modifications of existing permits to allow vertical or horizontal expansion of existing disposal facilities, except a facility operated by a utility regulated by the Public Service Commission, shall be classified as major permit modifications and shall not be granted by the director sooner than three years from the date any such facility commenced operation; provided, however, that a permit may be modified by the director to allow a vertical or horizontal expansion one time within three years from the date the facility commenced operation so long as the capacity of the facility is not increased more than 10 percent.

(iii) All modifications of permits for existing municipal solid waste disposal facilities for the addition at such facility of a recovered materials processing facility shall be classified as minor permit modifications, provided the location of such facility complies with the same buffer requirements applicable to the disposal facility. Such materials shall be reported at the disposal facility separately from waste materials destined for disposal. Operators of such disposal facilities may report to the Department of Community Affairs on an annual basis the total amounts of such materials diverted from landfill disposal.

(iv) The disposal facility permit holder shall provide written notification to the chief elected official of the jurisdiction in which the facility is located at least 30 days prior to starting any recovered materials processing facility. This notification shall include an indication of whether or not the ten-year demonstrated capacity of the landfill will be reduced. The permit holder shall comply with all applicable local zoning ordinances. If necessary to satisfy local solid waste planning and reporting requirements, disposal facility operators may be required by the county, municipality, or solid waste management authority for the jurisdiction in which the disposal facility is located to report the total amounts of such materials diverted from landfill disposal.

(2) Prior to the granting of any major modification of an existing solid waste handling permit by the director, a public hearing shall be held by the governing authority of the county or municipality in which the municipal solid waste facility or special solid waste handling facility requesting the modification is located not less than two weeks prior to the issuance of any permit under this Code section and notice of such hearing shall be posted at the site of such facility and advertised in a newspaper of general circulation serving the county or counties in which such facility is located at least 30 days prior to such hearing.

(3) Except as otherwise provided in this part, major modifications shall meet the siting and design standards applicable to new permit applications in effect on the date the modification is approved by the director; provided, however, that a facility may be granted a variance by the director from those standards when vertically expanded unless such variance is inconsistent with federal laws and regulations; provided, further, that the director shall not grant a variance from the provisions of subparagraph (B), (C), (D), or (E) of paragraph (4) of this subsection.

(4) No vertical expansions shall be approved under this subsection unless:

(A) The owner or operator demonstrates compliance with all standards not varied by the director;

(B) The owner or operator has installed a surface and ground-water monitoring system approved by the division under currently promulgated rules and has submitted the initial sampling results to the division;

(C) The owner or operator has implemented or installed a methane gas monitoring program or system approved by the division under currently promulgated rules and has submitted the initial sampling results to the division;

(D) The owner or operator has a closure and postclosure care plan approved by the division under currently promulgated rules;

(E) Where noncompliance with the standards for surface water, ground water, or methane gas has been determined, the owner or operator has a schedule and corrective action plan approved by the division for returning the site to compliance within six months of the director's approval of the corrective action plan. If the owner or operator cannot demonstrate that the site can be returned to compliance within said six-month period, the director shall not issue a permit to expand the site vertically but shall order the facility to prepare a final closure plan, including the cessation of waste receipt within six months of the final effective date of the order; and

(F) Where noncompliance with the standards for surface water, ground water, or methane gas may be determined and the permit has not been transferred to another person, the owner or operator has a remedial modification plan providing for the evacuation of all previously disposed waste from a permitted, unlined expansion site and redisposal of such waste into a conforming facility with a composite liner and leachate collection system. If noncompliance is determined, the director shall order the owner or operator to prepare a corrective action plan, which must be approved by the division, and such corrective action must be completed within the compliance time frame determined by the division. If the owner or operator cannot demonstrate that the site can be returned to compliance within such division compliance time frame, the director shall order the facility to prepare a final closure plan, including the cessation of waste receipt within 12 months of the final effective date of the order.

(5) Modifications for vertical expansions issued under this Code section may be restricted in duration, but in no case shall be effective for municipal solid waste landfills not having liners and leachate collection systems, other than those landfills restricted to construction or demolition waste.

(6) The owner or operator of any site not having a liner and leachate collection system which is vertically expanded and which subsequently fails to demonstrate compliance with all applicable surface water, ground-water, or methane gas standards shall demonstrate to the satisfaction of the director, through a corrective action plan, that the site has been or can be returned to compliance within six months of the director's approval of the corrective action plan. If the owner or operator fails to demonstrate to the satisfaction of the director that compliance has been attained or can be attained, the director shall notify the owner or operator, ordering cessation of the

acceptance of waste for disposal, remediation of noncompliance, and implementation of the final closure plan, to include a final date for closure.

(f) In the event of the modification, suspension, amendment, or revocation of a permit, the director shall serve written notice of such action on the permit holder and shall set forth in such notice the reason for such action.

(g) Prior to the issuance of any permit for a solid waste handling facility or the granting of any major modification of an existing solid waste handling permit, the director shall require written verification to be furnished by the applicant that the proposed facility complies with local zoning or land use ordinances, if any; and after July 1, 1992, that the proposed facility is consistent with the local, multijurisdictional, or regional solid waste management plan developed in accordance with standards promulgated pursuant to this part subject to the provisions of Code Section 12-8-31.1 and that the host jurisdiction and all jurisdictions generating solid waste destined for the applicants' facility can demonstrate that they are part of an approved solid waste plan developed in accordance with standards promulgated pursuant to this part and are actively involved in and have a strategy for meeting the state-wide goal of waste reduction by July 1, 1996. Prior to the issuance of any permit for a solid waste handling facility or the granting of any major modification of an existing solid waste handling permit that will handle solid waste from jurisdictions outside Georgia, the out-of-state solid waste generating jurisdictions shall provide documentation that they have a strategy for and are actively involved in meeting planning requirements and a waste reduction goal that are substantially equivalent to the planning requirements and waste reduction goal contained in this part.

(h) No permit for a disposal facility shall be issued to any regional solid waste management authority created under Part 2 of this article, the "Regional Solid Waste Management Authorities Act," until local and regional solid waste management plans consistent with this part have been developed for all jurisdictions participating in such authority and such plans are found to be consistent with the state solid waste management plan pursuant to subsection (d) of Code Section 12-8-31.1.

(i) No permit shall be issued for a new solid waste thermal treatment technology facility unless the applicant meets or exceeds standards adopted by the board which shall be consistent with and at least as stringent as the Federal New Source Performance Standards for new municipal waste combustors outlined in regulations pursuant to the federal Clean Air Act, 42 U.S.C. Section 1857, et seq., as amended, and 42 U.S.C. Section 7401, et seq., as amended.

(j) The director or his designee is authorized to inspect any generator in Georgia to determine whether that generator's solid waste is

acceptable for the intended handling facility. The division may require any generator in Georgia to cease offering solid waste for handling if such solid waste is not acceptable under standards promulgated by the board, and the division may prohibit the handling of such solid waste until waste management procedures acceptable to the division are developed. Such prohibition shall continue in effect until the waste management procedure for handling is approved in writing by the division. Any generator or handler in Georgia which does not comply with a prohibition made under this subsection shall be in violation of this part.

(k) Any inert waste landfill which, as of January 1, 2014, has been certified by a professional engineer registered in accordance with Chapter 15 of Title 43 as being in full compliance with all permit by rule requirements established in the rules and regulations of the division as they existed on January 1, 2012, may continue to operate under such permit by rule requirements. (Code 1981, § 12-8-24, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1991, p. 462, § 1; Ga. L. 1992, p. 3276, §§ 4, 5; Ga. L. 1993, p. 399, §§ 5, 6; Ga. L. 1994, p. 1922, § 1; Ga. L. 1995, p. 10, § 12; Ga. L. 1997, p. 1081, § 1; Ga. L. 2000, p. 1641, § 1; Ga. L. 2005, p. 1247, § 7/SB 122; Ga. L. 2010, p. 235, § 1/HB 1059; Ga. L. 2013, p. 171, § 1/HB 320.)

The 2013 amendment, effective July 1, 2013, added subsection (k).

12-8-27.1. Solid waste trust fund.

(a) There shall be established the solid waste trust fund. The director shall serve as trustee of the solid waste trust fund. The moneys deposited in such fund pursuant to this Code section, Code Section 12-8-30.6, and Code Section 12-8-40.1 may be expended by the director, with the approval of the board, for the following purposes:

(1) To take whatever emergency action is necessary or appropriate to assure that the public health or safety is not threatened whenever there is a release or substantial threat of a release of contaminants from a disposal facility;

(2) To take preventive or corrective actions where the release of contaminants presents an actual or potential threat to human health or the environment and where the owner or operator has not been identified or is unable or unwilling to perform corrective action, including but not limited to closure and postclosure care of a disposal facility and provisions for providing alternative water supplies;

(3) To take such actions as may be necessary to monitor and provide postclosure care of any disposal facility, including preventive and corrective actions, without regard to the identity or solvency of

the owner thereof, commencing five years after the date of completing closure; and

(4) To take such actions as may be necessary to implement the provisions of a scrap tire management program in this state, particularly as may be related to the cleanup of scrap tire disposal piles and facilities, regulation of tire carriers and other handlers, and disbursement of grants and loans to cities, counties, and other persons as may be necessary to implement fully the provisions of this part.

(b) If the director determines that a solid waste or special solid waste handling facility has been abandoned, that the owner or operator thereof has become insolvent, or that for any other reason there is a demonstrated unwillingness or inability of the owner or operator to maintain, operate, or close the facility, to carry out postclosure care of the facility, or to carry out corrective action required as a condition of a permit to the satisfaction of the director, the director may implement the applicable financial responsibility mechanisms. The proceeds from any applicable financial responsibility mechanisms shall be deposited in the solid waste trust fund.

(c) The determination of whether there has been an abandonment, default, or other refusal or inability to perform and comply with closure, postclosure, or corrective action requirements shall be made by the director.

(d) Any interest earned upon the corpus of the solid waste trust fund shall not become a part thereof but shall be paid over to the division to be utilized by the division for administration of the state solid waste management program. Any funds not expended for this purpose in the fiscal year in which they are generated shall be deposited into the state treasury. Nothing in this Code section shall be construed so as to allow the division to retain any funds required by the Constitution of Georgia to be paid into the state treasury. The division shall comply with all provisions of Part 1 of Article 4 of Chapter 12 of Title 45, known as the "Budget Act"; provided, however, that the division shall be exempt from the provisions of Code Section 45-12-92, which requires payment into the state treasury of moneys collected by state agencies. (Code 1981, § 12-8-27.1, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 3259, § 5; Ga. L. 1992, p. 3276, § 9; Ga. L. 2013, p. 171, § 2/HB 320; Ga. L. 2013, p. 274, § 3/HB 226.)

The 2013 amendments. — The first 2013 amendment, effective July 1, 2013, substituted "this Code section and Code Sections 12-8-30.6 and 12-8-40.1" for "this Code section, Code Section 12-8-27, Code Section 12-8-30.6, and Code Section 12-8-40.1" in the third sentence of the introductory paragraph of subsection (a). See the Code Commission note regarding the effect of these amendments. The second 2013 amendment, effective April 30, 2013, deleted "Code Section 12-8-27," preceding "Code Section 12-8-30.6" in the third sentence of the introductory para-

graph of subsection (a); and deleted "scrap" preceding "tire carriers" near the middle of paragraph (a)(4).

Code Commission notes. — The amendment of subsection (a) of this Code section by Ga. L. 2013, p. 171, § 2, irreconcilably conflicted with and was treated as superseded by Ga. L. 2013, p. 274, § 3. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974) and Ga. L. 2013, p. 141, § 54(d)/HB 79.

JUDICIAL DECISIONS

Cited in Wilbros, LLC v. State, 294 Ga. 514, 755 S.E.2d 145 (2014).

12-8-30.6. Civil penalties for violations; procedures.

JUDICIAL DECISIONS

Prior consent order did not amount to criminal punishment to which double jeopardy prohibitions applied. — Trial court properly denied a solid waste facility operator's double jeopardy plea in bar of prosecution because even though the parties stipulated that the consent order and the criminal action alleged the same nuisance conduct and each proceeding had the same goals of restraint, deterrence, and abatement, the criminal action was not barred by the sanctions imposed in the consent order since the consent order did not amount to criminal punishment to which double jeopardy prohibitions applied. Wilbros, LLC v. State, 294 Ga. 514, 755 S.E.2d 145 (2014).

12-8-30.8. Penalties for violations.

(a) Any person who:

(1) Knowingly transports or causes to be transported any solid waste as defined in this part to a facility which does not have a permit, which does not have a variance pursuant to this part, or which is not subject to an order of the director which specifically authorized continued operation of such facility;

(2) Knowingly treats, processes, stores, or disposes of any solid waste as defined in this part:

(A) Without a permit or an order of the director allowing such treatment, processing, storage, or disposal of solid waste;

(B) In knowing violation of any material condition or requirement of such permit or order; or

(C) In knowing violation of any material condition or requirement of any applicable regulations or standards adopted by the board in accordance with Code Section 12-8-23;

(3) Knowingly omits material, information, or makes any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or

used for purposes of compliance with this part or regulations promulgated pursuant to this part;

(4) Knowingly processes, stores, treats, transports, disposes of, or otherwise handles any solid waste as defined in this part, and who knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed for purposes of compliance with this part; or

(5) Knowingly transports without a manifest or causes to be transported without a manifest, any solid waste required by this part to be accompanied by a manifest

shall, upon conviction, be subject to a fine of not more than $50,000.00 for each day of violation or imprisonment for not less than one nor more than two years or, in the case of a violation of paragraph (1) or (2) of this subsection, three years, or both. If conviction is for a violation committed after a first conviction of such person under this subsection, the maximum punishment under the respective paragraphs shall be doubled with respect to both fine and imprisonment.

(b) An organization may be convicted for the criminal acts set forth in subsection (a) of this Code section if an agent of the organization performs the conduct which is an element of the criminal act set forth in subsection (a) of this Code section and the agent's action is authorized, requested, commanded, or recklessly tolerated by the board of directors of the organization or by a managerial official who is acting within the scope of such official's employment on behalf of the organization.

(c) Any sheriff, deputy sheriff, or other peace officer or local code enforcement officer shall have the authority to enforce the provisions of subsection (c) of Code Section 12-8-40.1. (Code 1981, § 12-8-30.8, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 3276, § 11; Ga. L. 1994, p. 1101, § 2; Ga. L. 2013, p. 274, § 4/HB 226.)

The 2013 amendment, effective April 30, 2013, added subsection (c).

JUDICIAL DECISIONS

Prior consent order did not amount to criminal punishment to which double jeopardy prohibitions applied. — Trial court properly denied a solid waste facility operator's double jeopardy plea in bar of prosecution because even though the parties stipulated that the consent order and the criminal action alleged the same nuisance conduct and each proceeding had the same goals of restraint, deterrence, and abatement, the criminal action was not barred by the sanctions imposed in the consent order since the consent order did not amount to criminal punishment to which double jeopardy prohibitions applied. Wilbros, LLC v. State, 294 Ga. 514, 755 S.E.2d 145 (2014).

12-8-30.9. Powers of local governmental bodies and state not limited by this part.

JUDICIAL DECISIONS

Prior consent order did not amount to criminal punishment to which double jeopardy prohibitions applied. — Trial court properly denied a solid waste facility operator's double jeopardy plea in bar of prosecution because even though the parties stipulated that the consent order and the criminal action alleged the same nuisance conduct and each proceeding had the same goals of restraint, deterrence, and abatement, the criminal action was not barred by the sanctions imposed in the consent order since the consent order did not amount to criminal punishment to which double jeopardy prohibitions applied. Wilbros, LLC v. State, 294 Ga. 514, 755 S.E.2d 145 (2014).

12-8-39. Cost reimbursement fees; surcharges.

(a) Effective January 1, 1992, each city or county which operates a municipal solid waste disposal facility is authorized and required to impose a cost reimbursement fee upon each ton of municipal solid waste or the volume equivalent of a ton, as determined by rules of the division, for each ton of municipal solid waste received at a municipal solid waste disposal facility regardless of its source. The fee imposed may be equal to, or a portion of, the true cost of providing solid waste management services on a per ton or volume equivalent as determined pursuant to the forms, rules, and procedures developed by the Department of Community Affairs.

(b) A minimum of $1.00 per ton or volume equivalent of the cost reimbursement fee specified in this Code section which is received by the city or county, if implemented after March 30, 1990, shall be paid into a local restricted account and shall be used for solid waste management purposes only.

(c) Effective January 1, 1992, when a municipal solid waste disposal facility is operated as a joint venture by more than one city or county or combination thereof, by a special solid waste district, or by an authority, the cost reimbursement fee specified in this Code section shall be imposed by the joint operators, district, or authority and the cost reimbursement fee received shall be administered as outlined in subsection (b) of this Code section and shall be remitted into a restricted account established by the participating local governments.

(d) Effective January 1, 1992, when a municipal solid waste disposal facility is operated by private enterprise, the host local government is authorized and required to impose a surcharge of $1.00 per ton or volume equivalent in addition to any other negotiated charges or fees which shall be imposed by and paid to the host local government for the facility and shall be used to offset the impact of the facility, public

education efforts for solid waste management, the cost of solid waste management, and the administration of the local or regional solid waste management plan; provided, however, that such surcharges may be used for other governmental expenses to the extent not required to meet the above or other solid waste management needs.

(e)(1) Owners or operators of any solid waste disposal facility other than an inert waste landfill as defined in regulations promulgated by the board or a private industry solid waste disposal facility shall assess and collect on behalf of the division from each disposer of waste a surcharge of 75¢ per ton of solid waste disposed. Two percent of said surcharges collected may be retained by the owner or operator of any solid waste disposal facility collecting said surcharge to pay for costs associated with collecting said surcharge. Surcharges assessed and collected on behalf of the division shall be paid to the division not later than the first day of July of each year for the preceding calendar year. Any facility permitted exclusively for the disposal of construction or demolition waste that conducts recycling activities for construction or demolition materials shall receive a credit towards such surcharges of 75¢ per ton of material recycled at the facility.

(2) The surcharge amount provided for in this subsection shall be subject to revision pursuant to Code Section 45-12-92.2.

(f) All surcharges required by subsection (e) of this Code section shall be paid to the division for transfer into the state treasury to the credit of the general fund. The division shall collect such fees until the unencumbered principal balance of the hazardous waste trust fund equals or exceeds $25 million, at which time the division shall not collect any further such surcharges until the unencumbered balance in such fund equals or is less than $12.5 million, at which time the division shall resume collection of such surcharges at the beginning of the next calendar year following the year in which such event occurs. The director shall provide written notice to all permitted solid waste disposal facilities at the time he receives notice that the unencumbered balance of such trust fund equals or exceeds $25 million or equals or is less than $12.5 million.

(g) Unless the requirement for the surcharge required by subsection (e) of this Code section is reimposed by the General Assembly, no such surcharge shall be collected after July 1, 2018.

(h) The division shall advertise to the public the surcharges imposed pursuant to subsection (e) of this Code section in accordance with rules promulgated by the board. (Code 1981, § 12-8-39, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 2234, § 4; Ga. L. 1992, p. 3276, §§ 15, 16; Ga. L. 2002, p. 927, § 1; Ga. L. 2011, p. 283, § 2/HB 274; Ga. L. 2012, p. 775, § 12/HB 942; Ga. L. 2013, p. 856, § 1/HB 276.)

The 2013 amendment, effective May 7, 2013, designated the existing provisions of subsection (e) as paragraph (e)(1) and added paragraph (e)(2); and substituted "July 1, 2018" for "July 1, 2013" in subsection (g).

12-8-39.3. Authorization to enforce collection of taxes, fees, or assessments.

JUDICIAL DECISIONS

Contract with private solid waste collection companies. — In choosing the option of contracting with private solid waste collection companies, a county was, through that method, providing solid waste collection services to county property owners within the meaning of O.C.G.A. § 12-8-39.3(a); the fact that the individuals performing that service were not county employees, but employees of private contractors, was of no moment, insofar as it related to a property owner's constitutional challenge to the county's solid waste ordinance. Mesteller v. Gwinnett County, 292 Ga. 675, 740 S.E.2d 605 (2013).

12-8-40.1. Tire disposal restrictions; fees.

(a) Effective July 1, 1990, each city, county, or solid waste management authority shall have the right to impose certain restrictions on scrap tires originating in or which may ultimately be disposed of in its area of jurisdiction. These restrictions may include but are not limited to:

(1) A ban on the disposal of scrap tires at solid waste disposal facilities within its control; and

(2) A requirement that scrap tires be recycled, shredded, chopped, or otherwise processed in an environmentally sound manner prior to disposal at solid waste disposal facilities owned or operated by the city, county, or authority.

(b) After December 31, 1994, no person may dispose of scrap tires in a solid waste landfill unless the scrap tires are shredded, chopped, or chipped in accordance with standards established by the board and:

(1) The director finds that the reuse or recycling of scrap tires is not economically feasible;

(2) The scrap tires are received from a municipal solid waste collector holding a valid solid waste collection permit under authority of this part and who transports fewer than ten scrap tires at any one time; or

(3) The scrap tires are received from a person transporting fewer than five scrap tires in combination with the person's own solid waste for disposal.

(c)(1) No person shall collect or transport any tires, other than new tires, unless the person:

(A) Obtains a tire carrier permit issued by the division; and

(B) Displays on each vehicle used to collect or transport tires a decal issued by the division; provided, however, that this subparagraph shall not apply to a common carrier that collects tires exclusively from outside this state and transports them directly to a scrap tire processor or end user within this state.

(2) As a condition of holding a permit to collect or transport tires, each permitted person shall:

(A) Report to the division in such manner and with such frequency as the division shall require the number of tires transported and the manner of disposition;

(B) Maintain financial assurance in accordance with subsection (l) of this Code section;

(C) Submit such other data as is determined by the board to be reasonably necessary to protect public health and the environment; and

(D) Pay to the division a nominal fee for each decal issued.

(c.1) No person shall process scrap tires unless the person has a scrap tire processing permit issued by the division. For purposes of this subsection, the term "process scrap tires" means any method, system, or other treatment designed to change the physical form, size, or chemical content of scrap tires for beneficial use.

(d) Subsection (c) of this Code section shall not apply to:

(1) A municipal solid waste collector holding a valid solid waste collection permit under authority of this part whose primary business is the collection of municipal solid waste;

(2) A private individual transporting no more than ten of the individual's own tires or a private individual transporting more than ten tires if such individual can provide proof of purchase with receipt for such tires;

(3) A company transporting the company's own tires to a scrap tire processor or end user or for proper disposal;

(4) A tire retailer transporting its own used tires if such dealer can provide proof of purchase with receipt for all used tires being transported and a document verifying the origin, route, and destination of such used tires;

(5) Any person transporting tires collected as part of an organized site cleanup activity; and

(6) The United States, the State of Georgia, any county, municipality, or public authority.

(e) After July 1, 1992, any person who generates scrap tires shall:

(1) Notify the division of such activities, requesting the issuance of an identification number, which number shall be used on scrap tire shipment manifests;

(2) Have the scrap tires collected and transported by persons in compliance with subsection (c) of this Code section;

(3) Maintain receipts indicating the disposition of the scrap tires;

(4) Maintain receipts indicating the permit number and name of the tire carrier to whom the tires were given;

(5) Maintain receipts indicating the disposal site or processing facility where the scrap tires were taken including the date of such disposal and the number of scrap tires; and

(6) Provide such other information as the board shall require and for such period of time as the board deems appropriate.

(f) No person may store more than 25 scrap tires anywhere in this state. Any person storing in excess of 25 scrap tires shall be deemed to be in violation of this part.

(g) Subsection (f) of this Code section shall not apply to any of the following:

(1) A solid waste disposal site permitted by the division if the permit authorizes the storage of scrap tires prior to their disposal;

(2) A tire retailer or a publicly owned vehicle maintenance facility with not more than 1,500 scrap tires in storage;

(3) A tire retreader with not more than 3,000 scrap tires in storage so long as the scrap tires are of the type the retreader is actively retreading;

(4) A licensed used motor vehicle parts dealer, a registered secondary metals recycler, or a privately owned vehicle maintenance facility that operates solely for the purpose of servicing a commercial vehicle fleet with not more than 500 scrap tires in storage; and

(5) A scrap tire processor approved by the division so long as the number of scrap tires in storage do not exceed the quantity approved by the division

if all of the scrap tires are secured in a locked enclosure or are otherwise adequately secured in a manner suitable to prevent unauthorized access; provided, however, that the division may grant a waiver of the enclosure requirement if the person requesting the waiver can definitively show a significant and unique economic hardship which impairs such person's ability to continue operating his or her business.

(g.1) Subsection (f) of this Code section shall not apply to a farm with not more than 100 scrap tires in storage or in use for agricultural purposes. In addition, the division may grant waivers to allow the storage or use of more than 100 scrap tires for agricultural purposes if such storage or use does not pose a threat to human health or the environment.

(h)(1) Beginning July 1, 1992, a fee is imposed upon the retail sale of all new replacement tires in this state of $1.00 per tire sold. The fee shall be collected by retail dealers at the time the retail dealer sells a new replacement tire to the ultimate consumer; provided, however, that a Georgia tire distributor who sells tires to retail dealers must collect such fees from any retail dealer who does not have a valid scrap tire generator identification number issued by the division. The fee and any required reports shall be remitted not less than quarterly on such forms as may be prescribed by the division. The division is authorized to contract with the Department of Revenue to, and the Department of Revenue is authorized to, collect such fees on behalf of the division. All fees received shall be deposited into the state treasury to the account of the general fund in accordance with the provisions of Code Section 45-12-92. All moneys deposited into the solid waste trust fund shall be deemed expended and contractually obligated and shall not lapse to the general fund.

(2) In collecting, reporting, and paying the fees due under this subsection, each distributor or retailer shall be allowed the following deductions, but only if the amount due was not delinquent at the time of payment:

(A) A deduction of 3 percent of the first $3,000.00 of the total amount of all fees reported due on such report; and

(B) A deduction of one-half of 1 percent of that portion exceeding $3,000.00 of the total amount of all fees reported due on such report.

(3) The tire fees authorized in this subsection shall cease to be collected on June 30, 2019. The director shall make an annual report to the House Committee on Natural Resources and Environment and the Senate Natural Resources and the Environment Committee regarding the status of the activities funded by the solid waste trust fund.

(4) The fee amount provided for in this subsection shall be subject to revision pursuant to Code Section 45-12-92.2.

(i)(1) The division may abate any threat or potential threat to public health or the environment created or which could be created by scrap tires or other scrap tire materials by removing or processing the scrap

tires or other scrap tire materials. Before taking any action to abate the threat or potential threat, the division shall give any person having the care, custody, or control of the scrap tires or materials or owning the property upon which the scrap tires or materials are located notice of the division's intentions and order the responsible party to abate the threat or potential threat in a manner approved by the division. Such order shall be issued in accordance with Code Section 12-8-30.

(2) If the responsible party is unable or unwilling to comply with such order or if no person who has contributed or is contributing to the scrap tires or scrap tire materials which are to be abated can be found, the director may undertake cleanup of the site utilizing funds from the solid waste trust fund.

(3) The division or its contractors may enter upon the property of any person at such time and in such manner as deemed necessary to effectuate the necessary corrective action to protect human health and the environment.

(4) Neither the State of Georgia nor the solid waste trust fund established in Code Section 12-8-27.1 shall be liable for any loss of business, damages, or taking of property associated with the corrective action.

(5) The division may bring an action or proceeding against the property owner or the person having possession, care, custody, or control of the scrap tires or other scrap tire materials to enforce the corrective action order issued under Code Section 12-8-30 and recover any reasonable and necessary expenses incurred by the division for corrective action, including administrative and legal expenses. The division's certification of expenses shall be prima-facie evidence that the expenses are reasonable and necessary. Notwithstanding any other provision of this subsection, any generator of scrap tires who is identified as being a contributor to the materials which are the object of the abatement and who can document that he or she has fully complied with this part and all rules promulgated pursuant to this part in disposing of such scrap tires shall not be liable for any of the cost of recovery actions of the abatement.

(6) Nothing in this part shall affect the right of any municipality or county to abate or clean up scrap tires or scrap tire materials which are a threat or potential threat to human health or the environment. The division may reimburse such local governments for such actions in accordance with procedures approved by the board.

(j) Except for the purposes of scrap tire corrective actions, the provisions of this Code section do not apply to:

(1) Tires with a rim size less than 12 inches;

(2) Tires from:

(A) Any device moved exclusively by human power; or

(B) Any device used exclusively for agricultural purposes, except a farm truck; or

(3) A retreadable casing while under the control of a tire retreader or while being delivered to a retreader.

(k) The director shall be authorized to order the cessation of operation of any tire carrier or scrap tire processor who is found not to be operating in compliance with this part or rules adopted pursuant to this part and the seizure of all property used in such unlawful operations; provided, however, that the tire carrier or scrap tire processor shall be afforded a hearing within 48 hours before an administrative law judge of the Department of Natural Resources upon such order of the director.

(l)(1) A surety bond shall be provided to the director by a tire carrier or scrap tire processor prior to issuance of a permit to ensure compliance with the provisions of this part.

(2) The bond required in this subsection shall be:

(A) Conditioned upon compliance with this part, any rules adopted pursuant to this part, and the carrier's or processor's permit; and

(B) In such amount as determined by the director necessary to ensure compliance, but in any event not less than $10,000.00 nor greater than $20,000.00.

(3) Such bond shall be payable to the director and issued by an insurance company authorized to issue such bonds in this state.

(4) Upon a determination by the director that a tire carrier or scrap tire processor has failed to meet the provisions of this part, rules promulgated pursuant to this part, or its permit, the director may, after written notice of such failure:

(A) Forfeit or draw that amount of such bond that the director determines necessary to correct the violation;

(B) Expend such amount for such purposes; and

(C) Require the replacement of that amount of such bond forfeited or drawn upon.

(5) Any moneys received by the director in accordance with paragraph (4) of this subsection shall be deposited into the solid waste trust fund established in Code Section 12-8-27.1. (Code 1981, § 12-8-40.1, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 3259, § 7; Ga. L. 1993, p. 399, §§ 11-14; Ga. L. 1997, p. 1081, § 4; Ga. L.

1999, p. 780, § 1; Ga. L. 2005, p. 1247, §§ 9, 10, 11, 12/SB 122; Ga. L. 2008, p. 287, § 1/SB 399; Ga. L. 2011, p. 283, § 3/HB 274; Ga. L. 2013, p. 274, § 5/HB 226; Ga. L. 2013, p. 856, § 2/HB 276; Ga. L. 2014, p. 230, § 1/HB 908.)

The 2013 amendments. — The first 2013 amendment, effective April 30, 2013, substituted the present provisions of paragraph (c)(1) for the former provisions, which read: "No person shall collect or transport scrap tires for the purpose of processing or disposal, process scrap tires, or purport to be in the business of collecting, transporting, or processing scrap tires unless the person has a scrap tire carrier or processor permit issued by the division. For purposes of this paragraph, the term 'process scrap tires' means any method, system, or other treatment designed to change the physical form, size, or chemical content of scrap tires for beneficial use."; substituted "collect or transport tires" for "collect scrap tires" in the introductory paragraph of (c)(2); deleted "scrap" preceding "tires" in subparagraph (c)(2)(A) and in paragraph (d)(3); deleted "and" at the end of subparagraph (c)(2)(B); substituted "; and" for a period at the end of subparagraph (c)(2)(C); added subparagraph (c)(2)(D) and subsection (c.1); rewrote paragraph (d)(2); deleted "and" at the end in paragraph (d)(3); added paragraphs (d)(4) and (d)(5); redesignated former paragraph (d)(4) as present paragraph (d)(6); deleted "scrap" preceding "tire carrier" in paragraph (e)(4); substituted "25 scrap tires" for "100 scrap tires" twice in subsection (f); added "any of the following" at the end of the introductory paragraph of subsection (g); inserted "or a publicly owned vehicle maintenance facility" in paragraph (g)(2); in paragraphs (g)(2) and (g)(3), substituted "1,500 scrap tires" for "3,000 scrap tires"; substituted "A licensed used motor vehicle parts dealer, a registered secondary metals recycler, or a privately owned vehicle maintenance facility that operates solely for the purpose of servicing a commercial vehicle fleet" for "An auto salvage yard" in paragraph (g)(4); added the ending undesignated paragraph of subsection (g); added subsection (g.1); substituted "tire carrier or scrap tire processor" for "scrap tire carrier or processor" twice in subsection (k), in paragraph (l)(1), and in paragraph (l)(4); deleted "for collecting or processing scrap tires" following "a permit" in paragraph (l)(1); and substituted "less than $10,000.00 nor greater than $20,000.00" for "to exceed $25,000.00" in subparagraph (l)(2)(B). The second 2013 amendment, effective May 7, 2013, added paragraph (h)(4).

The 2014 amendment, effective June 30, 2014, substituted "June 30, 2019" for "June 30, 2014" at the end of the first sentence of paragraph (h)(3).

ARTICLE 3

HAZARDOUS WASTE

PART 2

HAZARDOUS SITE RESPONSE

12-8-94. (For effective date, see note) Powers and duties of director.

Delayed effective date. — The second 1994 amendment, by Ga. L. 1994, p. 1101, in subsection (a), deleted "and" from the end of paragraph (4), substituted "; and" for the period at the end of paragraph (5), and added a paragraph (6) which would read: "To request the Georgia State Financing and Investment Commission for

the issuance of public debt to fund corrective action pursuant to this part; provided, however, that any moneys recovered from persons found to be legally liable for such corrective action shall be used to reduce any such public debt incurred." Ga. L. 1994, p. 1101, § 6, provided that the amendment to this Code section by that Act "shall become effective only upon the effective date of a duly ratified amendment to the Constitution authorizing the state to incur indebtedness to fund activities associated with the investigation, detoxification, removal, and disposal of any hazardous wastes, hazardous constituents, or hazardous substances at certain sites." As of May, 2014, no vote had been taken on the constitutional amendment.

12-8-95. Hazardous waste trust fund.

(a) There shall continue in existence the hazardous waste trust fund. The hazardous waste trust fund shall be funded in accordance with subsection (b) of Code Section 12-8-91. All moneys deposited in the fund shall be deemed expended and contractually obligated and shall not lapse to the general fund. The director shall serve as trustee of the hazardous waste trust fund.

(b) The moneys deposited in the hazardous waste trust fund may be expended by the director as follows:

(1) For activities associated with the investigation, detoxification, removal, and disposal of any hazardous wastes, hazardous constituents, or hazardous substances at sites where corrective action is necessary to mitigate a present or future danger to human health or the environment;

(2) For emergency actions the director considers necessary to protect public health, safety, or the environment whenever there is a release of hazardous wastes, hazardous constituents, or hazardous substances;

(3) For activities of the division associated with the administration of this part, including reviewing and overseeing investigations, corrective action, and other actions by federal agencies required under this article and supporting the reduction of hazardous waste and pollution prevention activities by federal agencies;

(4) In accordance with rules promulgated by the board, for financing of the state and local share of the costs associated with the investigation, remediation, and postclosure care and maintenance of sites placed on the National Priority List pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or sites placed on the hazardous site inventory pursuant to Code Section 12-8-97; provided, however, that the director shall ensure that beginning July 1, 2003, and annually in each following year, an amount equal to at least one-half of the sum of annual collections made pursuant to subsection (e) of Code Section 12-8-39 and appropriated to the department in accordance with

subsection (b) of Code Section 12-8-91 shall be available to be used for the purposes of this paragraph; provided, further, that if a county or municipal corporation has been or is the owner of or operator of such site, not less than $500,000 of such costs shall be paid from the hazardous waste trust fund; and

(5) For activities administered by the director associated with pollution prevention, including reduction of hazardous wastes generated in this state.

(c) The director may require the demonstration of financial responsibility as a condition of an order requiring corrective action for the release of hazardous wastes, hazardous constituents, or hazardous substances.

(d) If the director determines that corrective action has not been carried out as required by a condition of an order of the director to the reasonable satisfaction of the director, the director may implement the applicable financial responsibility instruments. The proceeds from any applicable financial responsibility instruments shall be deposited in the hazardous waste trust fund.

(e) In any case where a person is in bankruptcy, reorganization, or other arrangement pursuant to the federal Bankruptcy Code or where, with reasonable diligence, jurisdiction in any state court or any federal court cannot be obtained over a person likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this Code section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the person if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(f) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this Code section. Nothing in this subsection shall be construed to limit any other state or federal statutory, contractual, or common-law liability of a guarantor to a person including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under Section 107 or 111 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or any other applicable law. (Code 1981, § 12-8-95, enacted by Ga. L. 1992, p. 2234, § 5; Ga. L.

2002, p. 415, § 12; Ga. L. 2002, p. 927, § 3; Ga. L. 2004, p. 631, § 12; Ga. L. 2013, p. 856, § 3/HB 276.)

The 2013 amendment, effective May 7, 2013, added "and" at the end of paragraph (b)(4); substituted "generated in this state." for "generated in the state; and" at the end of paragraph (b)(5); and deleted former paragraph (b)(6), which read: "Provided that annual appropriations are made to the Department of Natural Resources in accordance with subsection (b) of Code Section 12-8-91, for transfer on an annual basis to the Georgia Hazardous Waste Management Authority in an amount equal to 10 percent of the previous year's payment into the state treasury by the division of fees and penalties pursuant to subsection (e) of Code Section 12-2-2, subsection (e) of Code Section 12-8-39, and Code Section 12-8-95.1. If in any year the fees cease to be collected due to the unencumbered principal balance exceeding $25 million in the hazardous waste trust fund, a transfer of funds shall be made to the Georgia Hazardous Waste Management Authority from the principal of the hazardous waste trust fund equal to the average transfer for the three preceding years. Such transferred funds are to be administered by the chief administrative officer of the Georgia Hazardous Waste Management Authority to fund source reduction and project activities as set forth in Article 4 of this chapter and in accordance with the policies of the board."

12-8-95.1. Hazardous waste management fees and hazardous substance reporting fees.

(a) The division is authorized and directed to charge and collect the fees for hazardous waste management activities and hazardous substance reporting fees as provided in this subsection. As used in this Code section, the term "hazardous waste" shall not include any material excluded by 40 C.F.R. Part 261 of the Code of Federal Regulations. Every large quantity generator and every small quantity generator shall pay the greater of $115.00 per calendar year or the total of the hazardous waste management fees, and every person who is required to report pursuant to Section 313 of Title III of the federal Superfund Amendments and Reauthorization Act of 1986 shall pay the annual hazardous substance reporting fees, imposed as follows:

(1) Every large quantity generator of hazardous waste shall pay an annual fee of $23.00 per ton for hazardous waste shipped off site for disposal or incineration, $18.40 per ton for hazardous waste shipped off site for treatment or storage, and $10.35 per ton for hazardous waste shipped off site for treatment by being burned for energy recovery in accordance with rules and regulations promulgated pursuant to Part 1 of this article; provided, however, that no large quantity generator shall be liable for off-site hazardous waste management fees exceeding $75,000.00 in any calendar year. In no event shall any person be liable for an off-site hazardous waste management fee on any hazardous waste for which an off-site hazardous waste management fee has previously been paid;

(2) Every large quantity generator of hazardous waste shall pay an annual fee of $11.50 per ton for hazardous waste disposed of or

incinerated on site, $4.60 per ton for hazardous waste treated or stored on site, and $2.90 per ton for hazardous waste treated on site by being burned for energy recovery in accordance with rules and regulations promulgated pursuant to Part 1 of this article; provided, however, that no large quantity generator shall be liable for on-site hazardous waste management fees for disposal or incineration, treatment or storage, or treatment by burning for energy recovery in any calendar year exceeding the following amounts and according to the following schedule:

(A) Twenty-five thousand dollars for such payments due on July 1, 1993, and on July 1, 1994;

(B) Fifty thousand dollars for such payments, excluding payments for the on-site treatment of waste water which is a hazardous waste, due on July 1, 1995, and on July 1, 1996;

(C) Seventy-five thousand dollars for such payments, excluding payments for the on-site treatment of waste water which is a hazardous waste, due on and after July 1, 1997;

(D) One thousand five hundred dollars for waste water which is a hazardous waste which is treated on site for payments due on July 1, 1995;

(E) Three thousand dollars for waste water which is a hazardous waste treated on site for payments due on July 1, 1996; and

(F) Seven thousand five hundred dollars for waste water which is a hazardous waste treated on site for payments due on and after July 1, 1997.

For the purposes of this paragraph, a generator who generates waste water which is a hazardous waste shall not be required to count such hazardous waste in determining its status as a large quantity generator, a small quantity generator, or a conditionally exempt small quantity generator. For the purposes of this paragraph, dilution of waste water that is a hazardous waste shall be considered treatment subject to the fees established by this paragraph. A large quantity generator which pays fees for the off-site management of hazardous waste under paragraph (1) of this subsection for a hazardous waste which was previously managed on site shall not pay the applicable on-site management fee for that hazardous waste;

(3) Every person who receives hazardous waste generated outside this state shall pay an annual fee of $23.00 per ton for hazardous waste disposed of or incinerated, $18.40 per ton for hazardous waste treated or stored, and $10.35 per ton for hazardous waste treated by being burned for energy recovery in accordance with rules and regulations promulgated pursuant to Part 1 of this article; provided,

however, that no person shall be liable for importation fees exceeding $75,000.00 per out-of-state generator in any calendar year. In no case shall any person who receives hazardous waste from any person outside this state and who pays an importation fee on such waste pursuant to this paragraph be liable for the off-site hazardous waste management fees required by paragraph (1) of this subsection. Persons who receive hazardous waste generated outside this state are not required to pay the fees required by this paragraph for those wastes generated by conditionally exempt small quantity generators which are located outside this state. For the purposes of this paragraph, a "conditionally exempt small quantity generator" means a generator who generates 220 pounds or less of hazardous waste in one month, as provided by rules promulgated by the board in accordance with this article; and

(4) Each person who is required to report pursuant to Section 313 of Title III of the federal Superfund Amendments and Reauthorization Act of 1986 shall pay to the division an annual hazardous substance reporting fee as follows:

(A) A facility with no reported release shall pay no fee;

(B) A facility with a reported release of less than 1,000 pounds during the calendar year shall pay a fee of $575.00 for that calendar year;

(C) A facility with a reported release equal to or greater than 1,000 pounds but less than 10,000 pounds during the calendar year shall pay a fee of $1,150.00 for that calendar year; and

(D) A facility with a reported release equal or greater than 10,000 pounds during the calendar year shall pay a fee of $1,725.00 for that calendar year.

(b) All hazardous waste and hazardous substance fees required by subsection (a) of this Code section shall be paid to the division for transfer into the state treasury to the credit of the general fund. The division shall collect such fees until the unencumbered principal balance of the hazardous waste trust fund equals or exceeds $25 million, at which time no hazardous waste or hazardous substance fees shall be levied until the balance in that fund is less than or equal to an unencumbered balance of $12.5 million, in which case the levy and collection of hazardous waste fees shall resume at the beginning of the next calendar year following the year in which such unencumbered balance occurs. The director shall provide written notice to all large quantity generators and hazardous waste treatment, storage, and disposal facilities and all persons who are required to report pursuant to Section 313 of Title III of the federal Superfund Amendments and Reauthorization Act of 1986 at such time as the director receives notice

that the unencumbered principal balance of the fund equals or exceeds $25 million or is equal to or less than $12.5 million.

(c) All hazardous waste fees levied under this Code section shall be based on the amounts of hazardous waste managed or imported within the preceding calendar year. Such fees for the period July 1, 1992, through December 31, 1992, shall be paid to the division not later than July 1, 1993. All subsequent hazardous waste fees shall be paid not later than the first day of July of each year for the preceding calendar year.

(d) All hazardous substance fees levied under this Code section shall be based on the hazardous substances reported for the preceding calendar year. All hazardous substance fees shall be paid not later than the first day of July of each year for the preceding calendar year.

(e) Persons who make payments of fees levied by this Code section later than 30 days after the due date specified in subsection (c) of this Code section shall pay a penalty of 15 percent of the balance due and shall pay interest on the unpaid balance at the rate imposed by law for delinquent taxes due to the state. Delinquent fees may be collected in a civil action instituted in the name of the director. In addition to the 15 percent penalty and the interest that may be collected along with the delinquent fees as provided in this subsection, the director shall be entitled to collect all costs, including administrative costs, and legal expenses incurred by the state in connection with its collection efforts.

(f) Hazardous waste which is generated by any of the following means is exempted from the fees required by this Code section:

(1) Corrective action required by an order, permit, or approved closure plan issued pursuant to Part 1 of this article;

(2) Voluntary corrective action required by any person in accordance with applicable laws and regulations; and

(3) Response actions required under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(g) The following persons shall not be required to pay the hazardous substance reporting fees required by this Code section:

(1) Persons who report pursuant to Section 313 of Title III of the federal Superfund Amendments and Reauthorization Act of 1986 only for substances not designated as regulated substances pursuant to rules and regulations of the board; and

(2) Persons who report pursuant to Section 313 of Title III of the federal Superfund Amendments and Reauthorization Act of 1986 only for petroleum fuels, lubricants, and hydraulic fluids and components

thereof that are designated as regulated substances pursuant to rules and regulations of the board.

(h) Unless fee requirements established in this Code section are reimposed by the General Assembly, no such fees shall be levied after July 1, 2018.

(i) In accordance with rules promulgated by the board pursuant to paragraph (6) of subsection (b) of Code Section 12-8-93, the director is authorized to grant a waiver of a portion of the hazardous waste management fees and hazardous substance reporting fees provided by subsection (a) of this Code section not to exceed a 25 percent reduction per year for a maximum of three years for any company as an incentive upon the recommendation of the director of the Pollution Prevention Assistance Division made in conjunction with programs and activities designed to encourage industries in the state to reduce their generation of wastes, including but not limited to programs established to recognize and reward pollution performance and environmental improvement.

(j) Beginning July 1, 2003, and continuing annually thereafter, federal agencies shall pay the hazardous waste management fees required by this Code section provided an amount not less than the sum of all fees collected from federal agencies is appropriated annually to the department and used in accordance with subsection (b) of Code Section 12-8-91 and used for the purposes set forth in paragraph (3) of subsection (b) of Code Section 12-8-95. (Code 1981, § 12-8-95.1, enacted by Ga. L. 1992, p. 2234, § 5; Ga. L. 1993, p. 500, § 6; Ga. L. 1994, p. 483, § 5; Ga. L. 1996, p. 993, § 2; Ga. L. 1997, p. 564, § 2; Ga. L. 2002, p. 927, § 4; Ga. L. 2013, p. 856, § 4/HB 276.)

The 2013 amendment, effective May 7, 2013, substituted "July 1, 2018" for "July 1, 2013" at the end of subsection (h).

12-8-96.1. Liability for cleanup costs; punitive damages; action for recovery of costs and damages; claims for contribution.

JUDICIAL DECISIONS

Action taken without agency involvement.

As there was no evidence that a consent or remediation order had been issued, a facility owner could not show a required "corrective action" for purposes of seeking contribution pursuant to O.C.G.A. § 12-8-96.1(e) for an alleged chemical contamination. Barrett Props., LLC v. Roberts Capitol, Inc., 316 Ga. App. 507, 729 S.E.2d 621 (2012).

PART 3

GEORGIA VOLUNTARY REMEDIATION PROGRAM

12-8-106. Criteria for participants in voluntary remediation program.

A participant in the voluntary remediation program must meet the following criteria:

(1) Be the property owner of the voluntary remediation property or have express permission to enter another's property to perform corrective action including, to the extent applicable, implementing controls for the site pursuant to written lease, license, order, or indenture;

(2) Not be in violation of any order, judgment, statute, rule, or regulation subject to the enforcement authority of the director; and

(3) Meet other such criteria as may be established by the board pursuant to Code Section 12-8-103. (Code 1981, § 12-8-106, enacted by Ga. L. 2009, p. 714, § 1/HB 248; Ga. L. 2013, p. 141, § 12/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in paragraph (2).

ARTICLE 9

GEORGIA HAZARDOUS SITE REUSE AND REDEVELOPMENT

12-8-200. Short title.

This article shall be known and may be cited as the "Georgia Brownfield Act." (Code 1981, § 12-8-200, enacted by Ga. L. 2002, p. 927, § 6; Ga. L. 2014, p. 247, § 1/HB 957.)

The 2014 amendment, effective July 1, 2014, substituted "Brownfield" for "Hazardous Site Reuse and Redevelopment" in this Code section.

12-8-202. Definitions.

(a) Unless otherwise provided in this article, the definition of all terms included in Code Sections 12-8-62 and 12-8-92 shall be applicable to this article.

(b) As used in this article, the term:

(1) "Corrective action plan" means the corrective action plan required by Code Section 12-8-207.

(2) "Ground water" means any subsurface water that is in a zone of saturation.

(3) "Petroleum" means petroleum, including crude oil or any fraction thereof (including gasoline, gasohol, diesel fuel, fuel oils including #2 fuel oil, kerosene, or jet turbine fuel), that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(4) "Preexisting release" means a release, as such term is defined in paragraph (11) of Code Section 12-8-92, which occurred prior to the prospective purchaser's application for a limitation of liability pursuant to this article. The term "preexisting release" includes but is not limited to release of petroleum even if such release is from an underground storage tank system as defined in paragraph (18) of Code Section 12-13-3.

(5) "Property interest" means any interest in real property, without regard to whether such interest is exclusive or possessory.

(6) "Prospective purchaser" means a person who intends to acquire a property interest in a property where there is a preexisting release or a person who has applied for a limitation of liability pursuant to this article within 30 days of acquiring such property interest in a property where there is a preexisting release.

(7) "Qualifying property" means a property which meets the criteria of Code Section 12-8-205.

(8) "Risk reduction standards" means those standards promulgated by the board pursuant to Part 2 of Article 3 of this chapter.

(9) "Soil" means any unconsolidated earth material, together with any unconsolidated plant or animal matter or foreign material that has been incorporated into it, that either consists of or remains within, or comes to be deposited on, native soil or regolith.

(10) "Source material" means any preexisting release that acts or may likely act as a reservoir for continued releases to ground water, soil, surface water, or air or act as a source for direct exposure. (Code 1981, § 12-8-201, enacted by Ga. L. 1996, p. 993, § 4; Ga. L. 1998, p. 1667, § 2; Code 1981, § 12-8-202, as redesignated by Ga. L. 2002, p. 927, § 6; Ga. L. 2005, p. 1227, § 1/SB 277; Ga. L. 2006, p. 72, § 12/SB 465; Ga. L. 2012, p. 843, § 1C/HB 1102; Ga. L. 2014, p. 247, § 2/HB 957.)

The 2014 amendment, effective July 1, 2014, deleted former paragraph (b)(1) which read: "'Certificate of compliance' means the certification of compliance with a corrective action plan required by Code Section 12-8-207."; redesignated former paragraphs (b)(2) and (b)(3) as present paragraphs (b)(1) and (b)(2), respectively; deleted former paragraph (b)(4) which read: "'Hazardous site inventory' means

the hazardous site inventory published by the division pursuant to Code Section 12-8-97."; redesignated former paragraph (b)(4.1) as present paragraph (b)(3); redesignated former paragraph (b)(5) as present paragraph (b)(4); added present paragraph (b)(5); in paragraph (b)(6), substituted "acquire a property interest in" for "purchase" near the beginning, and substituted "such property interest in" for "title to" near the end; and deleted "which a prospective purchaser intends to purchase and bring into compliance with the risk reduction standards" following "Code Section 12-8-205" at the end of paragraph (b)(7).

12-8-205. Criteria for property to qualify for limitation of liability.

In order to be considered a qualifying property for a limitation of liability as provided in Code Section 12-8-207, a property shall meet the following criteria:

(1) The property shall have a preexisting release;

(2) Any lien filed under subsection (e) of Code Section 12-8-96 or subsection (b) of Code Section 12-13-12 against the property shall be satisfied or settled and released by the director pursuant to Code Section 12-8-94 or 12-13-6, and satisfactory provision shall have been made as determined by the director for the repayment to the division of any funds expended by the division from the federal Leaking Underground Storage Tank Trust Fund;

(3) The property shall not:

(A) Be listed on the federal National Priorities List pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et seq.;

(B) Be currently undergoing response activities required by an order of the regional administrator of the federal Environmental Protection Agency issued pursuant to the provisions of such act; or

(C) Be a hazardous waste facility, as defined in Code Section 12-8-62, that is currently subject to a permit for the treatment, storage, or disposal of hazardous waste issued pursuant to Code Section 12-8-66; and

(4) The property shall meet other criteria as may be established by the board as provided in this article and Article 3 of this chapter. (Code 1981, § 12-8-204, enacted by Ga. L. 1996, p. 993, § 4; Ga. L. 1998, p. 1667, § 2; Code 1981, § 12-8-205, as redesignated by Ga. L. 2002, p. 927, § 6; Ga. L. 2005, p. 1227, § 2/SB 277; Ga. L. 2014, p. 247, § 3/HB 957.)

The 2014 amendment, effective July 1, 2014, substituted "shall" for "must" throughout this Code section; deleted "Code Section" following "Code Section 12-8-94 or" in the middle of paragraph (2); in subparagraph (3)(C), inserted a comma near the beginning and added ", that is currently subject to a permit for the treat-

ment, storage, or disposal of hazardous waste issued pursuant to Code Section 12-8-66" at the end.

12-8-207. Limitation of expenses following approval of a corrective action plan.

(a)(1) Upon the director's approval of the prospective purchaser corrective action plan or concurrence with the certification of compliance described in this Code section, whichever first occurs, a prospective purchaser shall not be liable to the state or any third party for costs incurred in the remediation of, equitable relief relating to, or damages resultant from the preexisting release, nor shall the prospective purchaser be required to certify compliance with risk reduction standards for ground water, perform corrective action, or otherwise be liable for any preexisting releases to ground water associated with the qualifying property.

(2) The limitation of liability provided under this Code section shall also benefit a qualifying purchaser who applies for a limitation of liability within 30 days following acquisition of title or any other new property interest in the qualifying property and subsequently receives the director's approval of a prospective purchaser corrective action plan or concurrence with a certification of compliance described in this Code section.

(b)(1) For qualifying properties which the director has designated as needing corrective action in accordance with paragraph (8) of subsection (a) of Code Section 12-8-97, any party desiring to qualify for a limitation of liability pursuant to this Code section shall submit a prospective purchaser corrective action plan to the division. The corrective action plan shall, at minimum, enumerate and describe in detail those actions planned and proposed to bring any source material or soil found on the qualifying property into compliance with all applicable rules and regulations adopted by the board governing the investigation, cleanup, and corrective action at properties listed on the hazardous site inventory. A corrective action plan submitted by a prospective purchaser under this subsection shall be in such form and meet such criteria as established by the board.

(2) The prospective purchaser shall submit proof of financial assurance, in such form as specified by the director, of his or her ability to implement the corrective action plan.

(3) Upon the director's approval of the prospective purchaser corrective action plan, it shall be the responsibility of the prospective purchaser to implement said plan. The director's approval of a prospective purchaser corrective action plan shall not in any way be

construed as a guarantee, promise, or assurance that the director will concur with the prospective purchaser's certification of compliance for source material and soil in accordance with the provisions of this Code section. Compliance with the appropriate risk reduction standards for source material or soil in effect at the time the director's concurrence is sought is the sole responsibility of the prospective purchaser. The prospective purchaser shall not acquire a vested right to the director's concurrence regardless of the expenditure of money. The prospective purchaser shall implement the corrective action plan with the understanding that the requirements of corrective action necessary to obtain a limitation of liability are subject to change because of newly discovered facts or subsequent changes in state or federal laws, rules, or regulations.

(4) The director's approval of the prospective purchaser corrective action plan shall specify a time within which the prospective purchaser must certify the qualifying property to be in compliance with the risk reduction standards for source material or soil in order to maintain the limitation of liability provided for by subsection (a) of this Code section. The director may revoke the limitation of liability provided for by subsection (a) of this Code section if the prospective purchaser fails to certify compliance within such time.

(5) If at any time the director determines that any element of an approved prospective purchaser corrective action plan must be modified in order to achieve compliance with the risk reduction standards for source material or soil or that the corrective action is not being implemented in accordance with the corrective action plan, the director may revoke his or her approval of the plan and the limitation of liability by providing the prospective purchaser with written notification specifying the basis for making such determination and requesting modification and resubmission of a modified plan or an opportunity to address any deficiencies in implementing the corrective action plan within a specified time. If at any time the prospective purchaser determines that any element of an approved prospective purchaser corrective action plan must be modified in order to achieve compliance with the risk reduction standards for source material or soil, the prospective purchaser shall notify the director and obtain approval of the proposed modification.

(6) A prospective purchaser shall, upon completion of those activities specified in the corrective action plan, submit to the director a compliance status report certifying the compliance of any source material or soil found on the qualifying property with the risk reduction standards for source material or soil and corrective action requirements. The qualifying property will be deemed in compliance with the source or soil contamination risk reduction standards upon

the prospective purchaser's receipt of the director's written concurrence with the compliance status report.

(c) For those qualifying properties which the director has not yet designated as being in need of corrective action, any party desiring to qualify for a limitation of liability as provided in this Code section shall certify the qualifying property to be in compliance with the risk reduction standards for source material or soil by submitting a compliance status report to the division in such form as provided by rules and regulations adopted by the board. A compliance status report submitted by a prospective purchaser under this subsection shall be in such form and meet such criteria as established by the board. The qualifying property will be deemed in compliance with the risk reduction standards for source material or soil upon the prospective purchaser's receipt of the director's written concurrence with the compliance status report.

(d) A person who holds indicia of ownership executed by the prospective purchaser primarily to protect said person's security interest in the qualifying property or who acts in good faith solely in a fiduciary capacity and who did not actively participate in the management, disposal, or release of hazardous wastes, hazardous constituents, or hazardous substances on or from the qualifying property shall not be liable to the state or any third party for costs incurred in the remediation of, equitable relief relating to, or damages resultant from the preexisting release at the qualifying property.

(e) When a person who holds indicia of ownership executed by the prospective purchaser primarily to protect said person's security interest in the qualifying property takes title to the qualifying property from the prospective purchaser via foreclosure or a deed in lieu of foreclosure, such new titleholder shall maintain his or her limitation of liability under subsection (d) of this Code section if:

(1) The director is informed in writing of the transfer of title; and

(2) Within 180 days, or such other time period as specified by the director, of said transfer of title, the new titleholder:

(A) Presents the name of a new party who qualifies as a prospective purchaser for the qualifying property along with said new party's written assurance, including financial assurance, that the prospective purchaser corrective action plan will be fully implemented; or

(B) Submits a statement in writing that the new titleholder complies with the requirements applicable to prospective purchasers under this article. (Code 1981, § 12-8-206, enacted by Ga. L. 1996, p. 993, § 4; Ga. L. 1998, p. 1667, § 2; Code 1981, § 12-8-207,

as redesignated by Ga. L. 2002, p. 927, § 6; Ga. L. 2006, p. 72, § 12/SB 465; Ga. L. 2014, p. 247, § 4/HB 957.)

The 2014 amendment, effective July 1, 2014, designated the existing provision of subsection (a) as paragraph (a)(1) and added paragraph (a)(2).

12-8-208. Exceptions to limitation of liability.

(a) The limitation of liability provided by subsection (a) of Code Section 12-8-207 shall be contingent upon the prospective purchaser's good faith implementation of the corrective action plan as approved by the director as well as the certification of compliance with the risk reduction standards and corrective action requirements. Such limitation of liability shall not be applicable during any time the director's approval of the corrective action plan has been suspended or revoked.

(b) The limitation of liability provided by this article shall not affect any right of indemnification which any person has or may acquire by contract against any other person who is otherwise liable for creating an environmental hazard; apply to persons who intentionally, wantonly, or willfully violate federal or state regulations in the cleanup process; or apply to any release occurring or continuing after the date of the certification of compliance unless any such continuing release is specifically addressed in the director's concurrence with the certification of compliance.

(c)(1) The limitation of liability provided by this article shall survive any subsequent change in the nature of a prospective purchaser's interest in the qualifying property and shall automatically inure to the benefit of heirs, assigns, successors in title, and designees of the person to whom such limitation of liability is granted and to any person acquiring any other property interest in the property for which the limitation of liability was granted; provided, however, that in no event shall the director's approval of a corrective action plan or concurrence with a certification of compliance operate to absolve from liability any party deemed to be a person who has contributed or is contributing to a release at the qualifying property.

(2) Any voluntary transfer of the title to a property or any portion thereof for which a limitation of liability has been granted to any party that would be disqualified from obtaining a limitation of liability for such property under Code Section 12-8-206 shall terminate any limitation of liability applicable to the transferor under this article.

(d) For the purpose of determining liability for continuing or future releases of regulated substances upon or from any qualifying property for which the director has concurred with a certification of compliance

pursuant to Code Section 12-8-207, the background or baseline concentration for any and all releases for which corrective action was performed or compliance certified or both shall be equivalent to the risk reduction standard for which compliance was certified in order to invoke the limitation of liability.

(e) The limitation of liability provided by this article shall have no effect on liability for releases of hazardous waste, hazardous constituents, or hazardous substances not addressed in the corrective action plan or the certification of compliance. Any such release shall constitute a new, separate, and distinct release, subject to the provisions of Part 2 of Article 3 of this chapter.

(f) Nothing in this article shall limit the authority of the director or the division to take action in response to any release or threat of release. Except as provided in this article, nothing shall limit the authority of the director or the division to seek recovery of costs from persons liable under Part 2 of Article 3 of this chapter. (Code 1981, § 12-8-207, enacted by Ga. L. 1996, p. 993, § 4; Ga. L. 1998, p. 1667, § 2; Code 1981, § 12-8-208, as redesignated by Ga. L. 2002, p. 927, § 6; Ga. L. 2005, p. 1227, § 3/SB 277; Ga. L. 2012, p. 843, § 2/HB 1102; Ga. L. 2014, p. hb0957, § 5/HB 957.)

The 2014 amendment, effective July 1, 2014, deleted "to any activities conducted on the qualifying property before the director's approval of the corrective action plan or concurrence with a certification of compliance, whichever first occurs, or" following "applicable" near the middle of the second sentence of subsection (a); and substituted the present provisions of subsection (c) for the former provisions, which read: "The limitation of liability provided by this article shall automatically inure to the benefit of heirs, assigns, successors in title, and designees of the person to whom such limitation of liability is granted; provided, however, that in no event shall the director's approval of a corrective action plan or concurrence with a certification of compliance operate to absolve from liability any party deemed to be a person who has contributed or is contributing to a release at the qualifying property; and provided, further, that a transfer of the title to the qualifying property or any portion thereof from the prospective purchaser to any other party deemed to be a person who has contributed or is contributing to a release at the property, to any person disqualified from obtaining a limitation of liability under Code Section 12-8-206, or back to the owner of the property from which the subject property was purchased shall terminate any limitation of liability applicable to the transferor under this article."

12-8-211. Application to identified purchasers.

The limitation of liability provided under this article shall also apply to any qualifying prospective purchaser who, after May 1, 2012, has applied for a limitation of liability for a qualifying property and who subsequently obtains the director's approval of a prospective purchaser corrective action plan or concurrence with a certification of compliance

for the qualifying property. (Code 1981, § 12-8-211, enacted by Ga. L. 2014, p. hb0957, § 6/HB 957.)

Effective date. — This Code section became effective July 1, 2014.

CHAPTER 13

UNDERGROUND STORAGE TANKS

12-13-3. Definitions.

As used in this chapter, the term:

(1) "Board" means the Board of Natural Resources of the State of Georgia.

(2) "Corrective action" means those activities required for response to and cleanup of releases of regulated substances from underground storage tanks, including, but not limited to, initial response, initial abatement measures and site check, initial site characterization, free product removal, investigations for soil and ground-water cleanup, and preparation and implementation of a corrective action plan.

(3) "Department" means the Department of Natural Resources of the State of Georgia.

(4) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.

(5) "Division" means the Environmental Protection Division of the Department of Natural Resources of the State of Georgia.

(6) "Federal act" means the Solid Waste Disposal Act, 42 U.S.C. Section 3152, et seq., as amended, particularly by the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, 42 U.S.C. Section 6991, et seq., as amended by Public Law 99-499, 1986.

(7) "Guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator.

(8) "Nonoperational storage tank" means any underground storage tank in which regulated substances will not be deposited or from

which regulated substances will not be dispensed after November 8, 1984.

(9) "Operator" means any person in control of or having daily responsibility for the operation of the underground storage tank.

(10) "Owner" means, in the case of an underground storage tank in use on November 8, 1984, or brought into use or capable of being used after that date, any person who owns an underground storage tank used for or capable of being used for the storage or dispensing of regulated substances and, in the case of any underground storage tank in use before November 8, 1984, but no longer in use or capable of being used on November 8, 1984, any person who owned such tank immediately before the discontinuation of its use; provided, however, such term shall not include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect that person's security interest in the underground storage tank.

(11) "Person" means an individual, trust, firm, joint-stock company, corporation, including a government corporation, partnership, association, municipality, commission, political subdivision, or any agency, board, department, or bureau of this state or of any other state or of the federal government.

(12) "Petroleum" means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(13) "Petroleum product" means petroleum, including gasoline, gasohol, diesel fuel, fuel oils including #2 fuel oil, and kerosene, including jet turbine fuel.

(14) "Regulated substance" means any substance defined in Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601, as amended by P.L. 99-499, 1986, et seq., and petroleum, including crude oil or any fraction thereof which is liquid at the standard conditions of temperature and pressure of 60 degrees Fahrenheit and 14.7 pounds per square inch absolute, but not including any substance regulated as a hazardous waste under Part 1 of Article 3 of Chapter 8 of this title, the "Georgia Hazardous Waste Management Act," as amended.

(15) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water, or subsurface soils.

(16) "Terminal" means a bulk storage facility for storing petroleum products supplied by pipeline or marine vessel.

(17) "Third-party liability" means:

(A) As to bodily injury, specific physical bodily injury proximately resulting from exposure, explosion, or fire caused by the presence of a release from a regulated underground storage tank and which is incurred by a person other than the owner or operator, the landlord of the owner or operator, employees or agents of an owner or operator, or employees or agents of the landlord of an owner or operator; and

(B) As to property damage, actual physical damage or damage due to specific loss of normal use of property owned by a person other than either the owner or operator of an underground storage tank from which a release has occurred or the landlord of an owner or operator of the underground storage tank from which a release has occurred.

(18) "Underground storage tank" means any one or combination of tanks, including underground pipes connected thereto, which is used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is 10 percent or more beneath the surface of the ground. (Code 1981, § 12-13-3, enacted by Ga. L. 1988, p. 2072, § 1; Ga. L. 1989, p. 14, § 12; Ga. L. 1989, p. 256, § 1; Ga. L. 1993, p. 91, § 12; Ga. L. 1994, p. 804, § 1; Ga. L. 2013, p. 141, § 12/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (14).

12-13-9. Establishing financial responsibility; claims against guarantor; Underground Storage Tank Trust Fund.

(a) The board shall promulgate regulations containing requirements for maintaining evidence of financial responsibility as deemed necessary and desirable for taking corrective action and for compensation of third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.

(b) Financial responsibility required by this Code section may be established in accordance with regulations promulgated by the board by any one or combination of the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer, or any other method satisfactory to the board. In promulgating requirements under this Code section, the board is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are acceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this chapter and comply with financial responsibility requirements.

(c) Financial responsibility programs established pursuant to this chapter and administered by the division may be submitted as evidence of financial responsibility required under this chapter.

(d) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal Bankruptcy Code or where, with reasonable diligence, jurisdiction in any state court or the federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this Code section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(e) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this Code section. Nothing in this Code section shall be construed to limit any other state or federal statutory, contractual, or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this Code section shall be construed to diminish the liability of any person under Sections 107 and 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., as amended by P.L. 99-499, 1986.

(f) There is hereby established the Underground Storage Tank Trust Fund. The director shall serve as trustee of this fund. The principal of the moneys deposited in such fund pursuant to Code Section 12-13-10 may be expended by the director for the following purposes:

(1) To take whatever emergency action is necessary or appropriate to assure that the public health or safety is not threatened whenever there is a release or substantial threat of a release of regulated substances from an underground storage tank;

(2) To take preventive or corrective actions where the release of the regulated substances presents an actual or potential threat to human health or the environment where the owner or operator has not been identified or is unable, as determined by the director, to perform

corrective action, including but not limited to, provisions for providing alternative water supplies;

(3) To provide compensation for third-party liabilities; provided, however, that any such expenditure shall be subject to the following limitations:

(A) A property owner shall not be considered a third party if the property was transferred by the owner or operator of an underground storage tank in anticipation of damage due to a release;

(B) Third-party liability property damage shall be reimbursed from the Underground Storage Tank Trust Fund based on the rental costs of comparable property during the period of loss of use up to a maximum amount equal to the fair market value. In the case of property that is actually destroyed as a result of a petroleum release, reimbursement shall be an amount necessary to replace or repair the destroyed property, whichever is less; and

(C) Payments for third-party liability damages, as defined in this chapter, shall never exceed the amount of the Underground Storage Tank Trust Fund coverage as provided in this chapter for any owner or operator and shall not include payments for any claims for attorney's fees for third-party claimants or punitive damages or mental anguish;

(4) To pay for any portion of the administrative cost of administering the Underground Storage Tank Trust Fund which exceeds the amount of interest earned on the corpus of such fund; provided, however, that no more than 10 percent of the fees collected annually pursuant to subsection (a) of Code Section 12-13-10 shall be used for such purpose;

(5) To provide reimbursements to eligible participating owners and operators who have conducted corrective action;

(6) To provide payments to state contractors for eligible participating owners and operators who are unable, as determined by the director, to conduct corrective action for petroleum releases from underground storage tanks; and

(7) To provide repayments for any grant, general appropriation, or bond issue as are authorized by general law which are advanced to the principal of the Underground Storage Tank Trust Fund to accomplish any of the purposes enumerated in paragraphs (1) through (6) of this subsection when the terms of the grant, appropriation, or bond issue require such repayment.

(g) Any interest earned upon the corpus of the Underground Storage Tank Trust Fund shall not become a part thereof but shall be paid over

to the division to be utilized by the division for administration of the state Underground Storage Tank Program. Any such funds not expended for this purpose in the fiscal year in which they are generated shall be deposited in the state treasury, provided that nothing in this Code section shall be construed so as to allow the division to retain any funds required by the Constitution of Georgia to be paid into the state treasury; provided, further, that the division shall comply with all provisions of Part 1 of Article 4 of Chapter 12 of Title 45, known as the "Budget Act," except Code Section 45-12-92, prior to expending any such funds.

(h) If any person chooses to make a claim against the fund and accepts payment from the fund, then the state shall be subrogated to any cause of action that the claimant may have to the extent of such payment or judgment. In any such action, the amount of damages shall be proved by the division by submitting to the court a written report of the amounts paid or owed from the fund to claimants. Such written report shall be admissible in evidence and the amounts paid from or owed by the fund to the claimants stated therein shall be presumed to be the amount of the damages.

(i) Notwithstanding any other provisions of law to the contrary, the Underground Storage Tank Trust Fund shall not be considered an insurance company or insurer under the laws of this state. (Code 1981, § 12-13-9, enacted by Ga. L. 1988, p. 2072, § 1; Ga. L. 1989, p. 14, § 12; Ga. L. 1994, p. 804, §§ 3, 4; Ga. L. 1999, p. 658, § 2; Ga. L. 2013, p. 141, § 12/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (e).